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Federal Register

Tuesday
November 24, 1998

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponosred by the Office of the Federal Register.

WHAT: Free public breifings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: Tuesday, Nov. 24, 1998 at 9:00 am.

WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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Presidential Documents

Title 3—

The President

Proclamation 7149 of November 19, 1998

National Great American Smokeout Day, 1998

By the President of the United States of America

A Proclamation

One of the greatest public health threats facing Americans today is tobacco addiction and all the related health disorders that come with it. More Americans die every year from tobacco-related diseases than from AIDS, illegal drugs, alcohol, fires, car accidents, murders, and suicides combined. Although we have heard for decades the Surgeon General's warning that smoking kills, each day more than 3,000 young Americans become regular smokers—and more than 1,000 of them will die prematurely as a result.

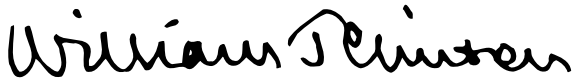
This past April, the Surgeon General issued a new report on tobacco that underscores the urgent need for comprehensive legislation to reduce youth smoking. Over the past 6 years, youth smoking has grown by one-third, increasing by an alarming 80 percent among African American youth. Currently, more than 36 percent of high school students smoke, and recent statistics released by the Centers for Disease Control also reaffirm what we already know: nicotine creates an addiction that is extremely difficult to overcome. Unfortunately, 86 percent of our young people who smoke daily and try to quit are unsuccessful, and casual teenage smokers—even those who smoke as few as three cigarettes a month—often go on to become regular smokers.

My Administration has worked hard for comprehensive and effective tobacco legislation that will cut teen smoking. We will continue our efforts until the Congress has acted to pass such legislation. Our 1999 budget also includes an unprecedented increase in funding for research at the National Institutes of Health, and the National Cancer Institute plans to allocate millions of those dollars for research into prevention and cessation programs to reduce tobacco use.

Each year, the Great American Smokeout gives us the opportunity to do what we should do every day: raise awareness among all Americans—but especially among children and teens—of the dangers of smoking. Through such youth-related promotions as the Great American SmokeScream and the Great American Smokeout Pledge, we can encourage young people who smoke to stop, and we can convince those who don't smoke that they should never start. Adult smokers should also remember the power of personal example and make a sincere effort to stop smoking on this special day, taking an important step toward a better, healthier future.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 19, 1998, as National Great American Smokeout Day. I call upon all Americans to join together in an effort to educate our children about the dangers of tobacco use, and I urge both smokers and nonsmokers to take this opportunity to begin healthier lifestyles that set a positive example for young people.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of November, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-third.



[FR Doc. 98–31531
Filed 11–23–98; 8:45 am]
Billing code 3195–01–P

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FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R–1024]

Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Final rule; technical amendment.

SUMMARY: The Board is amending Regulation D (Reserve Requirements of Depository Institutions) to remove the definition of *De novo depository institution*. The definition is not used in the Regulation.

EFFECTIVE DATES: November 24, 1998.

FOR FURTHER INFORMATION CONTACT: Rick Heyke, Senior Attorney, Legal Division (202/452–3688). For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Diane Jenkins (202/452–3544).

SUPPLEMENTARY INFORMATION:

Background

Section 204.2(p) of the Board's Regulation D (12 CFR part 204) defines *De novo depository institution* to mean a depository institution that was not in business on July 1, 1979, and was not the successor by merger or consolidation to a depository institution that was in business before the merger or consolidation. The definition is not used in the Regulation. Accordingly, the Board is removing it.

List of Subjects in 12 CFR Part 204

Banks, banking, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board is amending part 204 in chapter II of title 12 of the Code of Federal Regulations as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

1.The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 3105.

2. In § 204.2, paragraph (p) is removed and reserved.

By order of the Secretary of the Board, acting pursuant to delegated authority for the Board of Governors of the Federal Reserve System, November 18, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–31354 Filed 11–23–98; 8:45 am]

BILLING CODE 6210–01–P

FARM CREDIT ADMINISTRATION

12 CFR Part 611

RIN 3052–AB71

Organization; Balloting and Stockholder Reconsideration Issues

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: This final rule will amend Farm Credit Administration (FCA or Agency) regulations concerning Farm Credit System (System or FCS) ballots and the effective dates for mergers, consolidations, or transfers of direct lending authority from a Farm Credit Bank (FCB) or agricultural credit bank (ACB) to a Federal land bank association (FLBA). The amendments allow the use of identity codes on ballots, as long as the votes are tabulated by an independent third party; limit the scope of the regulation to System banks and associations; and remove descriptions of specific balloting procedures from the regulations. The amendments also reduce the earliest effective date of a merger, consolidation, or transfer of lending authority from 50 days to 35 days after stockholder notification, or 15 days after submission of documents to the FCA for final approval, whichever occurs later. The effects of the amendments are to provide more flexibility to institutions and stockholders when stockholder votes occur, to extend security and confidentiality requirements to all stockholder votes of banks and associations, to apply such requirements only to banks and associations, and to accelerate the effective date of the above-described corporate actions.

EFFECTIVE DATE: This regulation will become effective 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. Notice of the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Alan Markowitz, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4479;

or

Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Background

The FCA proposed amendments to its balloting and reconsideration period regulations on March 20, 1998 (63 FR 13564) as a part of its continuing efforts to reduce regulatory burdens on the System. This rule was proposed in response to requests by several System institutions to revise the secret ballot procedures and to accelerate the effective date of certain corporate actions.

As explained more fully below, we have made revisions to the proposed amendments to §§ 611.330 and 611.340 and adopted substantially as proposed the amendments to §§ 611.505(e) and 611.1122(k).

We received comment letters on the proposed regulations from the Farm Credit Council (Council) on behalf of its member banks and associations; AgriBank, FCB (AgriBank); Farm Credit Leasing Services Corporation (Leasing Corporation); and one individual via electronic mail. In addition, we received comments via telephone from the Farm Credit Banks Funding Corporation (Funding Corporation) and from two FLBAs. AgriBank made general comments supporting the proposed changes. Other comments addressed specific issues, as described below. All of the comments were carefully considered in the formulation of the final rule.

II. Maintaining Secrecy of Ballots

We amend § 611.330 to (1) apply the regulation only to banks and associations, (2) give affected institutions more flexibility than in the existing or the proposed regulation to choose how to comply with confidentiality requirements, (3) clarify that institutions may allow a stockholder to give voting discretion to the proxy of the stockholder's choice, and (4) apply the provisions to all bank and association stockholder votes, not just director elections. The form of § 611.330 has been significantly revised, as described more fully below. We also adopt amendments to § 611.340 to (1) limit its scope to banks and associations, (2) apply its provisions to all bank and association stockholder votes, and (3) add a 3-year retention period for records in votes other than director elections. The remainder of § 611.340 is adopted substantially as proposed.

The application of the final regulations to only banks and associations is a change from both the existing and the proposed regulations and is made in response to comments from the Leasing Corporation, the Funding Corporation, and the Council. Those commenters observed that the confidentiality requirements of section 4.20 of the Act expressly apply only to ''lending institutions'' of the System; therefore, they suggested amendments to conform the scope of the regulation to the statute. System institutions made similar comments when these regulations were originally promulgated in 1988, but we opted at that time for a broader application. *See* 53 FR 50384 (December 15, 1988). We have now reconsidered our position and determined that the purpose of section 4.20 of the Act is met if the regulation applies only to banks and associations. We believe that the Act's secret ballot requirement is intended to assure borrowers that their voting decisions on institutional matters will not adversely affect their loan relationships. This principle is equally applicable to borrowers of FLBAs, even though these institutions are agents for the lending banks and are not direct lenders. Therefore, in the final rule, §§ 611.330 and 611.340 apply only to System banks and associations.

Section 611.330(a) of the final rule continues to require each bank and association to adopt policies and procedures ensuring confidentiality. It also continues to prohibit signed ballots in any bank or association stockholder vote, even when an independent third party tabulates the votes. The only persons that may have access to information regarding how or whether a stockholder has voted are an independent third party and the FCA.

Paragraph (b) of § 611.330 allows banks and associations to use identity codes on ballots or other types of identification procedures in all stockholder votes, provided that individual stockholder votes can be identified only by an independent third party that tabulates the votes. In weighted voting, an independent third party is still required to tabulate the votes. Unlike the existing regulation, the final rule does not contain descriptions of permissible procedures, because we believe that some institutions may have incorrectly viewed the specific descriptions as limiting the range of permissible procedures.

Paragraph (c) of § 611.330 has no substantive changes from the existing regulation. It has been restated to clarify that, in proxy voting, a stockholder's vote is not considered to be final until balloting begins. Until balloting begins, a stockholder may withdraw the proxy and vote the ballot himself or herself. This means that an institution must retain all proxy ballots unopened until the stockholders who attend the stockholders' meeting have had an opportunity to withdraw any proxy ballots that have been mailed.

Subsequent to the publication of the proposed rule, an FLBA informed us that it had discarded approximately 40 percent of the proxy ballots cast in a recent stockholder vote because some stockholders had failed to mail back a proxy authorization form along with their ballot. The FLBA asked us to amend the regulations to allow proxy authorizations either to be a part of the proxy ballot, which is a format typically used by corporations, or to be printed on the back of the return envelope.

The inclusion of a signed proxy authorization form on the ballot itself would violate the Act's prohibition against signed ballots. However, printing the proxy authorization form on the back of the return envelope would not violate either the existing or the final rule, as long as the ballot is in a separate sealed envelope inside of the return envelope.[1] We believe that the broader language of the final rule will help associations, especially those that previously had stockholder votes with significant numbers of spoiled ballots, to craft more user-friendly secret ballot procedures.

[1] Only one envelope would be needed if an independent third party opens the envelope and tabulates the votes.

We reviewed the proxy voting practices used by the System and observed that some practices differ from those used by publicly held corporations. Although some FCS institutions permit stockholders to choose a proxy other than the one designated by the institution, stockholders do not usually receive the right to give voting discretion to their proxy. In order to provide stockholders greater voting flexibility, we add a new paragraph (d) to § 611.330 clarifying that institutions are permitted to give stockholders the opportunity to give voting discretion to their proxies. An institution granting this discretion to its stockholders does not violate the secret ballot requirements in the Act.

The Council asked us to confirm the System's understanding that, notwithstanding the provision that an independent third party that tabulates the votes may not make disclosures about how or whether an individual stockholder voted, the third party could disclose the total numerical results of a stockholder vote. The Council stated that such disclosure helps ''to preserve confidence in the integrity'' of the stockholder vote. The final rule does not prohibit the disclosure of total numerical results, but we encourage institutions with weighted voting to consult with their stockholders on this issue. In weighted voting, as the Council pointed out, it is theoretically possible to determine from the total results how individual stockholders have voted, particularly when the institution has a relatively small number of stockholders.

We received two additional comments regarding the proposed amendments to § 611.330. AgriBank stated that the provisions regarding confidentiality in a stockholder vote appeared to ''fairly balance a stockholder's right to a confidential ballot with the rather minimal burden imposed on System institutions.'' An individual commenter expressed concern regarding the proposal to allow the use of identity codes on ballots. This commenter stated that the codes would defeat the secrecy of voting and provide an opportunity for misuse by those who had access to the marked ballots. We understand the commenter's concern but believe that the final rule's requirement of an independent third party to open the ballots and tabulate votes is an adequate means of preventing misuse of ballot information. We will, of course, continue to evaluate compliance as a part of our corporate approvals and examinations.

An FLBA commented on the proposed addition to § 611.340(c) that provided a 5-year minimum retention

period for records in votes other than director elections. The FLBA requested that, in any case where an independent third party tabulates votes and maintains the voting records, the independent third party be required to hold the voting materials for only 3 years. With respect to votes other than director elections, we agree with the FLBA that a 3-year retention period is adequate and have reduced the retention period in the final rule for all voting records that do not pertain to director elections. The minimum retention period applies to such records held by either the institution or an independent third party. However, for director elections, the existing retention period of the term of the director is unchanged. In most cases, director terms are for 3 years or less, and there is no compelling reason to retain the voting records for a period longer than the term of the director.

III. Change of Effective Date for Merger, Consolidation, or Transfer of Lending Authority

We amend § § 611.505(e) and 611.1122(k) to provide that, in the case of a transfer of direct lending authority or an association merger, the effective date of the transfer or merger may be as early as 35 days after stockholder notification of the results of the stockholder vote on the transaction, or 15 days after submission of final documents to the FCA, whichever occurs later. The effect of these changes is to accelerate by 15 days the earliest possible date when the merger or transfer of lending authority may occur. In addition, language is added to the same paragraphs to restate the requirement in section 7.9(b)(3)(A) of the Act that, if a valid petition for reconsideration is filed in a timely manner with the FCA, the merger or transfer of lending authority cannot take effect until the expiration of 60 days after the date on which stockholders were notified of the final result of the first vote. These provisions are adopted substantially as proposed.

We received two comments on the proposed effective date amendments. AgriBank stated that it fully supported the proposal, especially in merger transactions where the merging institutions will be able to implement the wishes of their stockholders more quickly. An individual commenter was opposed to the proposed amendment, maintaining that stockholders should have the full amount of time required by statute to reconsider the merger or transfer of lending authority, because of the importance of the matters involved. We agree with the commenter that the decision is an important one and point out that the amendments we have adopted do not shorten the statutory time period during which stockholders may petition the FCA for a reconsideration vote. Stockholders will still be able to petition the Agency up to 35 days after results of the original vote are mailed: the 30-day period required by section 7.9(b)(3)(A) of the Act, and 5 days for delivery of the notice to the stockholders. The amendment merely shortens the time for the FCA to process final approval documents.

List of Subjects in 12 CFR Part 611

Agriculture, Banks, banking, Rural areas.

For the reasons stated in the preamble, part 611 of chapter VI, title 12 of the Code of Federal Regulations is amended to read as follows:

PART 611—ORGANIZATION

1. The authority citation for part 611 is revised to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 4.20, 4.21, 5.9, 5.10, 5.17, 7.0–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142, 2183, 2203, 2208, 2209, 2243, 2244, 2252, 2279a–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; secs. 409 and 414 of Pub. L. 100–399, 102 Stat. 989, 1003, and 1004.

2. Subpart C is amended by revising the heading to read as follows:

Subpart C—Election of Directors and Other Voting Procedures

3. Section 611.330 is revised to read as follows:

§ 611.330 Confidentiality in voting.

(a) No bank or association may use signed ballots in stockholder votes. Each bank and association must adopt policies and procedures to ensure that all information and materials regarding how or whether an individual stockholder has voted remain confidential, including with respect to the institution, its directors, stockholders, or employees, or any other person except:

(1) An independent third party tabulating the vote; or

(2) The Farm Credit Administration.

(b) A bank or association may use balloting procedures, such as an identity code on the ballot, that can be used to identify how or whether an individual stockholder has voted only if the votes are tabulated by an independent third party. In weighted voting, the votes must be tabulated by an independent third party. An independent third party that tabulates the votes must certify in writing that such party will not disclose to any person (including the institution, its directors, stockholders, or employees) any information about how or whether an individual stockholder has voted, except that the information must be disclosed to the Farm Credit Administration if requested.

(c) Once a bank or association receives a ballot, the vote of that stockholder is final, except that a stockholder may withdraw a proxy ballot before balloting begins at a stockholders' meeting.

(d) A bank or association may give a stockholder voting by proxy an opportunity to give voting discretion to the proxy of the stockholder's choice, provided that the proxy is also a stockholder eligible to vote.

4. Section 611.340 is amended by removing the words ''the election of directors'' and adding in their place, the word ''voting'' in the heading; by removing the words ''System institution'' and adding in their place, the words ''bank and association'' and by removing the words ''the election of board members'' and adding in their place, the words ''a stockholder vote'' in paragraph (a); by removing the word ''shall'' and adding in its place, the word ''must'' each place it appears in paragraphs (a) and (b); and by revising paragraphs (c) and (d) to read as follows:

§ 611.340 Security in voting.

* * * * *

(c) Ballots and proxy ballots must be safeguarded before the time of distribution or mailing to voting stockholders and after the time of receipt by the bank or association until disposal. In an election of directors, ballots, proxy ballots and election records must be retained at least until the end of the term of office of the director. In other stockholder votes, ballots, proxy ballots, and records must be retained for at least 3 years after the vote.

(d) The voting procedures of each institution must provide for the establishment of a tellers committee or other designated group of persons which must be responsible for validating ballots and proxies and tabulating voting results. An institution and its officers, directors, and employees may not make any public announcement of the results of a stockholder vote before the tellers committee or other designated persons have validated the results of the vote.

Subpart E—Transfer of Authorities

5. Section 611.505 is amended by revising paragraph (e) to read as follows:

§ 611.505 Farm Credit Administration review.

* * * * *

(e) The effective date of a transfer may not be less than 35 days after mailing of the notification to stockholders of the results of the stockholder vote, or 15 days after the date of submission to the Farm Credit Administration of all required documents for the Agency's consideration of final approval, whichever occurs later. If a petition for reconsideration is filed within 35 days after the date of mailing of the notification of stockholder vote, the constituent institutions must agree on a second effective date to be used in the event the transfer is approved on reconsideration. The second effective date may not be less than 60 days after stockholder notification of the results of the first vote, or 15 days after the date of the reconsideration vote, whichever occurs later.

Subpart G—Mergers, Consolidations, and Charter Amendments of Associations

6. Section 611.1122 is amended by revising paragraph (k) to read as follows:

§ 611.1122 Requirements for mergers or consolidations.

* * * * *

(k) The effective date of a merger or consolidation may not be less than 35 days after the date of mailing of the notification to stockholders of the results of the stockholder vote, or 15 days after the date of submission to the Farm Credit Administration of all required documents for the Agency's consideration of final approval, whichever occurs later. If a petition for reconsideration is filed within 35 days after mailing of the notification to stockholders of the results of the stockholder vote, the constituent institutions must agree on a second effective date to be used in the event the merger or consolidation is approved on reconsideration. The second effective date may not be less than 60 days after stockholder notification of the results of the first vote, or 15 days after the date of the reconsideration vote, whichever occurs later.

Dated: November 16, 1998.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 98–31340 Filed 11–23–98; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–65–AD; Amendment 39–10890; AD 98–24–04]

RIN 2120–AA64

Airworthiness Directives; SOCATA—Groupe Aerospatiale Model TBM 700 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain SOCATA—Groupe AEROSPATIALE (SOCATA) Model TBM 700 airplanes. This AD requires repetitively inspecting (using visual methods) the web of the left and right flap carriage for cracks, and replacing any cracked flap carriage with one of improved design. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by this AD are intended to detect and correct cracks in a flap carriage, which could result in loss of the flap function with consequent reduced and/or loss of airplane control.

DATES: Effective December 28, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 28, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from SOCATA Groupe Aerospatiale, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France; telephone: (33) 5.62.41.76.52; facsimile: (33) 5.62.41.76.54; or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 893–1400; facsimile: (954) 964–4141. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 95–CE–65–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut Street, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain SOCATA Model TBM 700 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 18, 1998 (63 FR 49881). The NPRM proposed to require repetitively inspecting (using visual methods) the web of the left and right flap carriage for cracks, and replacing any cracked flap carriage with one of improved design. The proposed repetitive inspections would no longer be required on those flap carriages replaced with improved design parts.

Accomplishment of the proposed inspections as specified in the NPRM would be required in accordance with SOCATA Service Bulletin SB 70–048 57, Amendment 1, dated January 1995. The replacements, if necessary, would be accomplished in accordance with Chapter 57–50–03 of the applicable maintenance manual. The parts necessary are referenced in the service bulletin and are available from the manufacturer.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 44 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 3 workhours per airplane to accomplish the inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the initial inspections

specified in this AD on U.S. operators is estimated to be $7,920, or $180 per airplane.

These figures only take into account the costs of the initial inspection and do not take into account the costs of any repetitive inspections or the costs of replacing any flap carriage found cracked. The FAA has no way of determining the number of repetitive inspections each owner/operator will incur over the life of the affected airplanes; or the number of flap carriages that will be found cracked during the inspections and need to be replaced.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–24–04 SOCATA—GROUPE AEROSPATIALE: Amendment 39–10890; Docket No. 95–CE–65–AD.

Applicability: Model TBM 700 airplanes, serial numbers 1 through 92, 97, and 98, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To detect and correct cracks in a flap carriage, which could result in loss of the flap function with consequent reduced and/or loss of airplane control, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, and thereafter at intervals not to exceed 100 hours TIS, inspect (using visual methods) the web of the left and right flap carriages (both the inboard and outboard carriages) for cracks. Accomplish these inspections in accordance with SOCATA Service Bulletin SB 70–048 57, Amendment 1, dated January 1995.

(b) If any cracked flap carriage is found during any inspection required by this AD, prior to further flight, replace it with a carriage of improved design. Accomplish this replacement in accordance with Chapter 57–50–03 of the applicable maintenance manual. The parts necessary are referenced in SOCATA Service Bulletin SB 70–048 57, Amendment 1, dated January 1995, and are available from Socata at the address referenced in paragraph (e) of this AD.

(1) Repetitive inspections will no longer be required on those flap carriages replaced with improved design parts.

(2) Flap carriages may be replaced with improved design parts at any time (but must immediately be replaced if found cracked), as terminating action for the repetitive inspections of this AD.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to SOCATA Service Bulletin SB 70–048 57, Amendment 1, dated January, 1995, should be directed to SOCATA Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930–F65009 Tarbes Cedex, France; telephone: (33) 5.62.41.76.52; facsimile: (33) 5.62.41.76.54; or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 893–1400; facsimile: (954) 964–4141. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) The inspections required by this AD shall be done in accordance with SOCATA Service Bulletin SB 70–048 57, Amendment 1, dated January 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from SOCATA Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930–F65009 Tarbes Cedex, France; or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French AD 94–110(B)R1, dated March 15, 1995.

(g) This amendment becomes effective on December 28, 1998.

Issued in Kansas City, Missouri, on November 10, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31010 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–14–AD; Amendment 39–10902; AD 98–24–17]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –30, and –40 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10–10, –30, and –40 series airplanes, that requires replacement of certain taper-lok attachments and forward trunnion bolts with new components that attach the left and right main landing gear (MLG) to each wing. This amendment is prompted by a report indicating that, due to overstrength of the forward trunnion bolt, an MLG broke away and ruptured a wing fuel tank while an airplane was being operated off the runway. The actions specified by this AD are intended to ensure that the MLG separates from the wing when it is subjected to unpredictable overloads during abnormal operations, and to prevent consequent primary structural damage to the airplane.

DATES: Effective December 29, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 29, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from the Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ronald Atmur, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5224; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10–10, –30, and –40 series airplanes was published in the **Federal Register** on January 22, 1998 (63 FR 3267). That action proposed to require replacement of certain taper-lok attachments and forward trunnion bolts with new components that attach the left and right main landing gear (MLG) to each wing.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

Several commenters support the proposed rule.

Request to Extend Compliance Time

One commenter requests that the compliance time for accomplishing the proposed replacement of certain taper-lok attachments and forward trunnion bolts be extended from the proposed 5 years to 6 years. The commenter states that such an extension will allow the replacement to be accomplished during a regularly scheduled heavy maintenance visit, and thereby eliminate any additional expenses that would be associated with special scheduling. The FAA does not concur. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the unsafe condition, the availability of required parts, normal maintenance schedules, and the significant amount of time that is necessary to perform the replacement. In consideration of all of these factors, the FAA has determined that further delay of this replacement is not appropriate. However, under the provision of paragraph (g) of the final rule, the FAA may approve requests for adjustments to the compliance time if sufficient data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Request That Credit Be Given for Previous Replacements

One commenter recommends that the FAA revise the proposed rule to specify that operators will be given ''credit'' for having previously accomplished the actions specified in the proposed rule. The FAA does not consider that a change to the final rule is necessary. Operators are given credit for work previously performed by means of the phrase in the ''Compliance'' section of the AD that states, ''Required as indicated, unless accomplished previously.'' Therefore, in the case of this AD, if the required replacement has been accomplished prior to the effective date of this AD, this AD does not require that it be repeated.

Request That the Forward Trunnion Bolt Be Inspected

One commenter requests that the FAA ensure that the ''forward'' trunnion bolt is replaced, not the ''aft'' trunnion bolt. The FAA finds that the forward trunnion bolt was addressed correctly in the proposed rule. No change to the final rule is necessary.

Request To Ensure That Other AD's Do Not Conflict With This AD

One commenter requests that the FAA ensure that requirements of AD 96–16–01, amendment 39–9701 (61 FR 39312, July 29, 1996), and AD 96–03–05, amendment 39–9502 (61 FR 5281, February 12, 1996), do not conflict with the requirements of the proposed AD. The commenter states that these two AD's already require installation and modification of the trunnion bolts in accordance with McDonnell Douglas Service Bulletins DC10–57–78 and DC10–57–82. The commenter also states that these AD's have introduced a new trunnion bolt part number for Model DC–10–30 series airplanes (reference McDonnell Douglas Service Bulletin DC10–32–239, Revision 1) that is not included in Service Bulletin DC10–57–82.

The FAA finds that clarification is necessary. Both AD 96–16–01 and AD 96–03–05 require either removing the chrome plating on the trunnion bolt, replacing the plating, and reinstalling the reworked bolt; or replacing the trunnion bolt with a serviceable bolt. Replacement of the subject trunnion bolts in accordance with either of these AD's constitutes terminating action for the requirement to replace the trunnion bolts, as required by paragraphs (a)(2), (c)(1), and (c)(2) of this AD. The FAA has revised the final rule by including new paragraphs (e) and (f) to clarify this point. Paragraph (d) of this AD also addresses a similar point for Model DC–10–30 and DC–10–40 series airplanes.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air

safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

• *For McDonnell Douglas Model DC–10–10 Series Airplanes*

There are approximately 119 Model DC–10–10 series airplanes of the affected design in the worldwide fleet, and 108 airplanes of U.S. registry that will be affected by the requirements for replacement of taper-lok attachments and forward trunnion bolts. The FAA estimates that it will take approximately 462 work hours per airplane to accomplish these required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $47,000 per airplane. Based on these figures, the cost impact of these required actions on U.S. operators is estimated to be $8,069,760, or $74,720 per airplane.

There are approximately 111 Model DC–10–10 series airplanes of the affected design in the worldwide fleet, and 82 airplanes of U.S. registry that will be affected by the requirements for replacement of larger attach bolts and installation of bolt retainers. The FAA estimates that it will take approximately 500 work hours per airplane to accomplish these required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $11,734 per airplane. Based on these figures, the cost impact of these required actions on U.S. operators is estimated to be $3,422,188, or $41,734 per airplane.

• *For McDonnell Douglas Model DC–10–30 and DC–10–40 Series Airplanes*

There are approximately 168 Model DC–10–30 and DC–10–40 series airplanes of the affected design in the worldwide fleet, and 82 airplanes of U.S. registry that are identified as Groups I and II airplanes in the relevant service bulletins and that will be affected by the requirements for replacement of larger attach bolts, installation of bolt retainers, and replacement of forward trunnion bolts. The FAA estimates that it will take approximately 576 work hours per airplane to accomplish these required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $20,000 per airplane. Based on these figures, the cost impact of these required actions on U.S. operators is estimated to be $4,473,920, or $54,560 per airplane.

There are approximately 20 Model DC–10–30 and DC–10–40 series airplanes of the affected design in the worldwide fleet, and 6 airplanes of U.S. registry that are identified as Group III airplanes in the relevant service bulletins and that will be affected by the requirements for replacement of forward trunnion bolts. The FAA estimates that it will take approximately 76 work hours per airplane to accomplish this required action, and that the average labor rate is $60 per work hour. Required parts will cost approximately $15,800 per airplane. Based on these figures, the cost impact of this required action on U.S. operators is estimated to be $122,160, or $20,360 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

However, the FAA has been advised that the following actions have been accomplished on Model DC–10–10 series airplanes in accordance with the requirements of this AD:

• Taper-lok attachments and forward trunnion bolts have been replaced on 77 U.S.-registered airplanes. Therefore, the future economic cost impact of those actions on U.S. operators is now only $2,316,320.

• Larger attach bolts have been replaced and bolt retainers have been installed on 77 U.S.-registered airplanes. Therefore, the future economic cost impact of those actions on U.S. operators is now only $208,670.

The FAA also has been advised that the following actions have been accomplished on Model DC–10–30 and DC–10–40 series airplanes in accordance with the requirements of this AD:

• Forward trunnion bolts and larger attach bolts have been replaced and bolt retainers have been installed on 40 U.S.-registered airplanes identified as Groups I and II airplanes in the relevant service bulletins. Therefore, the future economic cost impact of those actions on U.S. operators is now only $2,291,520.

• Forward trunnion bolts have been replaced on 3 U.S.-registered airplanes identified as Group III airplanes in the relevant service bulletins. Therefore, the future economic cost impact of this action on U.S. operators is now only $61,080.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–24–17 McDonnell Douglas: Amendment 39–10902. Docket 97–NM–14–AD.

Applicability: Model DC–10–10, DC–10–30, and DC–10–40 series airplanes, certificated in any category; as listed in the following McDonnell Douglas service bulletins:

• McDonnell Douglas DC–10 Service Bulletin 57–78, Revision 1, dated August 26, 1986;

• McDonnell Douglas DC–10 Service Bulletin 57–79, Revision 1, dated September 21, 1979, as revised by McDonnell Douglas DC–10 Service Bulletin Change Notification 57–79, dated January 23, 1980; and

• McDonnell Douglas DC–10 Service Bulletin 57–82, dated February 19, 1980.

Note 1: This AD applies to each airplane identified in the preceding applicability

provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the main landing gear (MLG) separates from the wing when it is subjected to unpredictable overloads during abnormal operations, and to prevent consequent primary structural damage to the airplane, accomplish the following:

(a) For Model DC–10–10 series airplanes, as listed in McDonnell Douglas DC–10 Service Bulletin 57–78, Revision 1, dated August 26, 1986: Within 5 years after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD, in accordance with the service bulletin.

(1) Replace 24 TL taper-lok attachments that attach the left and right MLG attach fitting assemblies on each wing with heat-treat TLH taper-lok attachments in accordance with the service bulletin. And

(2) Replace each forward trunnion bolt on the left and right MLG of each wing with a ''zero margin'' trunnion bolt in accordance with the service bulletin.

Note 2: Replacement of taper-lok attachments and forward trunnion bolts accomplished prior to the effective date of this AD in accordance with McDonnell Douglas DC–10 Service Bulletin 57–78, dated February 19, 1980, is considered acceptable for compliance with the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(b) For Model DC–10–10 series airplanes, as listed in McDonnell Douglas DC–10 Service Bulletin 57–79, Revision 1, dated September 21, 1979, as revised by McDonnell Douglas DC–10 Service Bulletin Change Notification 57–79, dated January 23, 1980: Within 5 years after the effective date of this AD, replace each 1½-inch-diameter bolt and bushing that attach the left and right MLG attach fitting and rear spar of each wing with a 1¼-inch-diameter bolt, and install bolt retainers, in accordance with the service bulletin and service bulletin change notification.

Note 3: Replacement of 1½-inch-diameter bolts and installation of bolt retainers prior to the effective date of this AD in accordance with McDonnell Douglas DC–10 Service Bulletin 57–79, dated June 5, 1979, are considered acceptable for compliance with the requirements of paragraph (b) of this AD.

(c) For Model DC–10–30 and DC–10–40 series airplanes: Except as provided by paragraph (d) of this AD, within 5 years after the effective date of this AD, accomplish the requirements of paragraph (c)(1) or (c)(2) of this AD, as applicable, in accordance with McDonnell Douglas DC–10 Service Bulletin 57–82, dated February 19, 1980.

(1) For airplanes identified as Groups I and II in the service bulletin: Replace each forward trunnion bolt on the left and right MLG of each wing with a ''zero margin'' forward trunnion bolt; replace each 1½-inch-diameter bolt and bushing that attach the left and right MLG attach fitting and rear spar of each wing with a 1¼-inch-diameter bolt, and install bolt retainers, in accordance with the service bulletin.

(2) For airplanes identified as Group III in the service bulletin: Replace each forward trunnion bolt on the left and right MLG of each wing with a ''zero margin'' trunnion bolt in accordance with the service bulletin.

(d) For Model DC–10–30 and DC–10–40 series airplanes: Installation of a trunnion bolt having part number (P/N) ARG7558–501 or P/N ARG7558–507 on the MLG, in accordance with AD 96–03–05, amendment 39–9502, constitutes terminating action for the requirement to replace the trunnion bolts for that landing gear, as required in paragraphs (c)(1) and (c)(2) of this AD.

(e) For Model DC–10–30 and DC–10–40 series airplanes: Replacement of the trunnion bolts with a serviceable part in accordance with paragraph (c)(1)(ii)(B) of AD 96–03–05, amendment 39–9502, constitutes terminating action for the requirement to replace the trunnion bolts, as required in paragraphs (c)(1) and (c)(2) of this AD.

(f) For Model DC–10–10 series airplanes: Replacement of the trunnion bolts with a serviceable part in accordance with paragraph (a)(1)(ii)(B) of AD 96–16–01, amendment 39–9701, constitutes terminating action for the requirement to replace the trunnion bolts, as required in paragraph (a)(2) of this AD.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(i) The actions shall be done in accordance with McDonnell Douglas DC–10 Service Bulletin 57–78, Revision 1, dated August 26, 1986; McDonnell Douglas DC–10 Service Bulletin 57–79, Revision 1, dated September 21, 1979, as revised by McDonnell Douglas DC–10 Service Bulletin Change Notification 57–79, dated January 23, 1980; and McDonnell Douglas DC–10 Service Bulletin 57–82, dated February 19, 1980. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment becomes effective on December 29, 1998.

Issued in Renton, Washington, on November 16, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31171 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–70–AD; Amendment 39–10825; AD 98–21–16]

RIN 2120–AA64

Airworthiness Directives; British Aerospace HP137 Mk1, Jetstream Series 200, and Jetstream Models 3101 and 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; withdrawal.

SUMMARY: This action withdraws direct final rule Airworthiness Directive (AD) 98–21–16, which would have applied to all British Aerospace (BAe) HP137 Mk1, Jetstream Series 200, and Jetstream Models 3101 and 3201 airplanes; and would have superseded AD 98–12–23 (this AD will remain in effect, unless the Federal Aviation Administration (FAA) initiates additional rulemaking action). AD 98–21–16 would have required repetitively replacing the windshield wiper arm, attachment bolts, and assembly; measuring the material thickness of the upper and lower toggle attachment brackets on the nose landing gear of the affected airplanes, and replacing the toggle attachment bracket lugs. Since the issuance of the direct final rule, the FAA has received a written adverse comment. Accordingly, the direct final rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Mr. S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri

64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION: The FAA published AD 98–21–16 as a direct final rule with request for comments in the **Federal Register** on October 8, 1998 (63 FR 54039). That direct final rule amended part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all BAe HP137 Mk1, Jetstream Series 200, and Jetstream Models 3101 and 3201 airplanes. That AD would have superseded AD 98–12–23 with a new AD to require repetitively replacing the windshield wiper arm, attachment bolts, and assembly; measuring the material thickness of the upper and lower toggle attachment brackets on the nose landing gear of the affected airplanes, and replacing the toggle attachment bracket lugs.

AD 98–21–16 was the result of additional mandatory continuing airworthiness information (MCAI) pertaining to this subject received from the airworthiness authority for the United Kingdom. The actions specified in that AD were intended to prevent the windshield wiper arm from corroding, detaching from the airplane during flight, and penetrating the fuselage, which could result in possible injury to the pilot and passengers; and to prevent collapse of the nose landing gear caused by the current design, which could result in loss of control of the airplane during landing operations.

The Direct Final Rule Procedure

The FAA anticipated that AD 98–21–16 would not result in adverse or negative comment and therefore issued it as a direct final rule. The requirements of AD 98–21–16 addressed an unsafe condition identified by a foreign civil airworthiness authority and do not impose a significant burden on affected operators. In accordance with Section 11.17 of the Federal Aviation Regulations (14 CFR 11.17), unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment was received within the comment period, AD 98–21–16 would have become effective on January 6, 1999. If any written comment(s) was received within the comment period that was adverse or negative comment or written notice was received of the intent to submit such a comment, the FAA would publish in the **Federal Register** a document withdrawing the direct final rule (AD 98–21–16). The FAA could then issue a notice of proposed rulemaking with a new comment period.

Actions Since the Issuance of the Direct Final Rule

During the comment period for the 98–21–16, the FAA received a written adverse comment. The commenter objects to the 90-day repetitive replacement requirement of the windshield wiper arm attachment bolt and windshield arm assembly. The commenter suggests that these replacements occur at 8 year intervals as specified in the service information.

Accordingly, the direct final rule is hereby withdrawn.

Withdrawal of this direct final rule constitutes only such action, and does not preclude the agency from issuing a notice in the future, nor does it commit the agency to any course of action in the future.

Regulatory Impact

Since this action only withdraws a direct final rule, it has no adverse economic impact and imposes no additional burden on any person. It will have no substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, direct final rule AD 98–21–16, Amendment 39–10825, Docket No. 98–CE–70–AD, published in the **Federal Register** on October 8, 1998 (63 FR 54039), is withdrawn.

Issued in Kansas City, Missouri, on November 16, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31315 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–45–AD; Amendment 39–10908; AD 98–21–09]

Airworthiness Directives; Robinson Helicopter Company Model R22 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 98–21–09, which was sent previously to all known U.S. owners and operators of Robinson Helicopter Company (RHC) Model R22 helicopters by individual letters. This AD requires installing fuel tank vent tube(s), with modified attachment to the mast tube, if not previously accomplished; installing a spring into the flexible tube leading to the main fuel tank; and installing a spring into the flexible tube leading to the auxiliary fuel tank, if an auxiliary fuel tank is installed. This amendment is prompted by an incident in which the flexible vent connecting the rigid vent tube to the main fuel tank kinked, resulting in fuel starvation and a hard landing after uncommanded engine shutdown. The actions specified by this AD are intended to prevent fuel starvation, loss of engine power, and a subsequent forced landing.

DATES: Effective December 9, 1998, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 98–21–09, issued on September 28, 1998, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before January 25, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–45–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Bumann, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, Propulsion Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5265, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On September 28, 1998, the FAA issued Priority Letter AD 98–21–09, applicable

to RHC Model R22 helicopters, which requires installing fuel tank vent tube(s), with modified attachment to the mast tube, if not previously accomplished; installing a spring into the flexible tube leading to the main fuel tank; and installing a spring into the flexible tube leading to the auxiliary fuel tank, if an auxiliary fuel tank is installed. That action was prompted by an incident in which a hard landing resulted from an uncommanded engine shutdown. The pilot reported that the fuel quantity gauges indicated fuel consumption from the auxiliary fuel tank only, with the main fuel tank indication remaining at or near full. When the auxiliary fuel tank quantity gauge reached empty, the engine misfired and then stopped. An inspection revealed a kink in the flexible vent tube connecting the rigid vent tube to the main fuel tank. Two similar incidents have occurred with this single vent design. This condition, if not corrected, could result in fuel starvation, loss of engine power, and a subsequent forced landing.

The FAA has reviewed RHC R22 Service Bulletin SB–83 dated March 4, 1997 (SB–83), which describes procedures for modifying attachment of the fuel tank vent(s); and RHC R22 Service Bulletin SB–84 dated September 8, 1998 (SB–84), which describes procedures for installing springs in the vent tubes to prevent kinks. RHC kit instructions KI–118–1 R22 Fuel Tank Vent Upgrade For Ships Without Auxiliary Tank, dated March 4, 1997, and RHC KI–118–2 R22 Fuel Tank Vent Upgrade For Ships With Auxiliary Tank, dated April 29, 1997, which describe procedures for installing fuel tank vent tube(s), part number (P/N) A731–3, are attached to SB–83. RHC kit instructions KI–140 R22 Fuel Tank Vent Upgrade For Fuel Tanks With Single Vent, dated September 3, 1998, which describe procedures for installing springs into the flexible tube leading to the main fuel tank, and, if an auxiliary fuel tank is installed, into the flexible tube leading to the auxiliary fuel tank, are attached to SB–84.

Since the unsafe condition described is likely to exist or develop on other RHC Model R22 helicopters of the same type design, the FAA issued priority letter AD 98–21–09 to prevent fuel starvation, loss of engine power, and a subsequent forced landing. The AD requires, within 25 hours time-in-service (TIS) or 30 calendar days after the effective date of this AD, whichever occurs first, installing fuel tank vent tube(s), P/N A731–3, with modified attachment to the mast tube, if not previously accomplished; installing a spring, P/N B408–2, into the flexible tube leading to the main fuel tank; and installing a spring, P/N B408–1, into the flexible tube leading to the auxiliary fuel tank, if an auxiliary fuel tank is installed. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, the installations are required prior to further flight, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on September 28, 1998, to all known U.S. owners and operators of RHC Model R22 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

The only change to the priority letter in this published version of this AD is that the reference in Note 1 to the alternative methods of compliance is corrected from paragraph ''(d)'' to paragraph ''(c)''.

The FAA estimates that 700 helicopters of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per helicopter to accomplish the required actions, and the average labor rate is $60 per work hour. Required parts will cost approximately $65 for each helicopter without an auxiliary fuel tank installed or $105 for each helicopter with an auxiliary fuel tank installed. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $225 per helicopter for helicopters with an auxiliary fuel tank installed, or $185 per helicopter for helicopters without an auxiliary fuel tank installed.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–SW–45–AD''. The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the

Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

98–21–09 Robinson Helicopter Company: Amendment 39–10908. Docket No. 98–WW–45–AD.

Applicability: Model R22 helicopters, serial numbers 0002 through 1451, inclusive, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required within 25 hours time-in-service or 30 calendar days after the effective date of this AD, whichever occurs first, unless accomplished previously.

To prevent fuel starvation, loss of engine power, and a subsequent forced landing, for helicopters overhauled by Robinson Helicopter Company (RHC) prior to January 1, 1991, which do not have a main fuel tank (only) with dual vent tubes, or, if the auxiliary fuel tank is installed, do not have a crossover vent tube between the fuel tanks, accomplish the following:

(a) Visually inspect the fuel tank vent tube(s) in the mast fairing. If each fuel tank vent tube is attached only to the mast tube at two locations, the helicopter complies with the requirements of paragraph (a) of this AD. If each fuel tank vent tube is attached to the mast tube at one location, and to the rain scupper (channel), part number (P/N) A032–16, on the fuel tank cowling at another location:

(1) For helicopters without an auxiliary fuel tank installed, remove the existing vent tube, P/N A731–1, and install an airworthy vent tube, P/N A731–3, with flexible tube, P/N A729–7, using an MS27039C0806 screw and AN960–8L washer (alternate P/N NAS1149FN816P) at the lower clamp, P/N A695–1 (see Figure 1).

(2) For helicopters with an auxiliary fuel tank installed, remove the existing main fuel tank vent tube, P/N A731–1, and auxiliary fuel tank vent tube, P/N A731–2, and install airworthy vent tubes, P/N A731–3, with flexible tube, P/N A729–7, for main tank and flexible tube, P/N A729–17, for auxiliary tank using MS27039C0807 screw and AN960–8L washer (alternate P/N NAS1149FN816P) at lower clamp, P/N A695–1 (see Figure 2).

(b) Install spring, P/N B408–2, into the flexible vent tube, P/N A729–7, leading to the main fuel tank; and install spring, P/N B408–1, into the flexible vent tube, P/N A729–17, leading to the auxiliary fuel tank (if an auxiliary fuel tank is installed), in accordance with RHC kit instructions KI–140 R22 Fuel Tank Vent Upgrade For Fuel Tanks With Single Vent, dated September 3, 1998.

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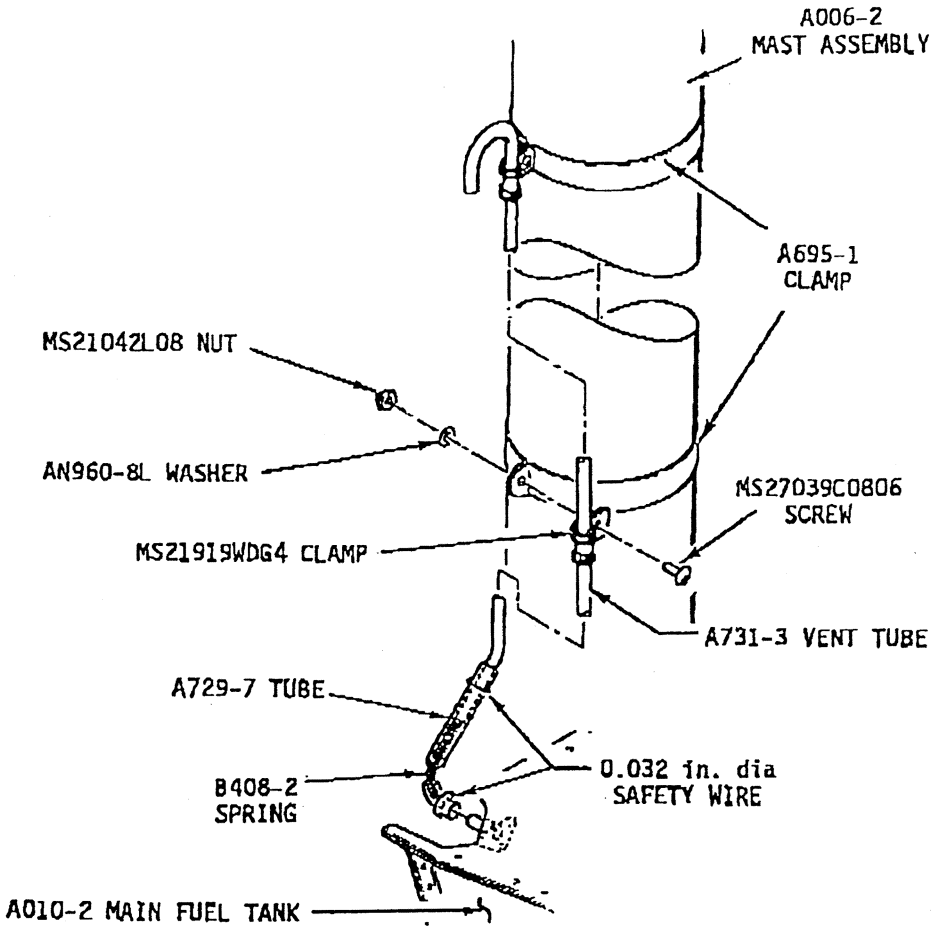
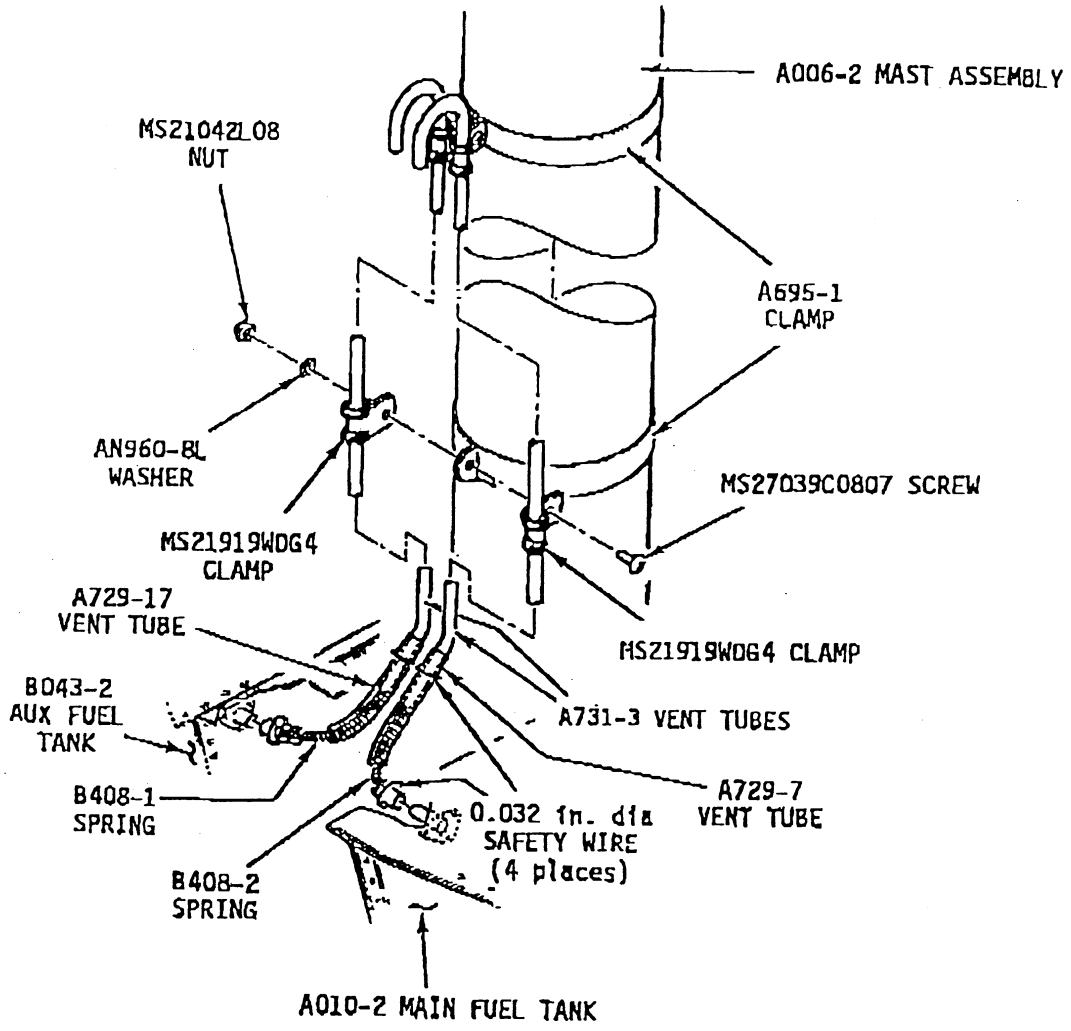


HELICOPTER WITHOUT AUXILIARY FUEL TANK

FIGURE 1



HELICOPTER WITH AUXILIARY FUEL TANK

FIGURE 2

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Note 2: RHC R22 Service Bulletin SB–83, dated March 4, 1997, and RHC R22 Service Bulletin SB–84, dated September 8,1998, pertain to the subject of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on December 9, 1998, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 98–21–09, issued September 28, 1998, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on November 17, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–31328 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–19–AD; Amendment 39–10906; AD 98–24–21]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS 332C, AS 332L, AS 332L1, and AS 332L2 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Eurocopter France (ECF) Model AS 332C, AS 332L, AS 332L1, and AS 332L2 helicopters. This action requires inserting instructions into the Model AS 332C, AS 332L, AS 332L1, and AS 332L2 Rotorcraft Flight Manuals (RFMs) regarding actions to take if either the ''OVSP 1'' or ''OVSP 2'' amber warning light illuminates. This action also requires, for the Model AS 332C, AS 332L, and AS 332L1 helicopters, measuring the vibration levels of the engine-to-main gearbox (MGB) shaft, inspecting the torque on the MGB coupling bolts, and conducting an engine-to-MGB coupling 23,000 revolutions per minute (RPM) input check. This amendment is prompted by an accident involving a Model AS 332L1 helicopter in which the helicopter experienced an engine overspeed resulting in failure of both engines. The actions specified in this AD are intended to prevent failure of the rotor drive engine-to-MGB coupling, which, if undetected, could result in an engine overspeed leading to an uncontained engine turbine wheel burst and subsequent loss of control of the helicopter.

DATES: Effective December 9, 1998.

Comments for inclusion in the Rules Docket must be received on or before January 25, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–19–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Horn, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5125, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on ECF Model AS 332C, AS 332L, AS 332L1, and AS 332L2 helicopters. The DGAC advises that failure of the MGB coupling could cause loss of load on the engine, and result in engine overspeed. The DGAC warning stems from an accident involving a Model AS 332L1 helicopter in which the helicopter experienced an engine overspeed resulting in failure of both engines.

ECF has issued Eurocopter Service Telex (Telex) No. 00047/0275/97, dated October 2, 1997. That service telex specifies checking the tightening torque loads on the MGB coupling tie-bolts; checking the condition of the splined flanges; confirming the presence of the O-ring on the splined sleeve; and checking the vibration level of the engine-to-MGB 23,000 RPM input shaft every 25 flying hours. ECF has also issued Eurocopter Service Bulletin No. 63.00.21 Ed. 1., dated June 26, 1998, which specifies the same inspections as the previously mentioned Telex, but also specifies a recurring 50 hour time-in-service (TIS) check of the tightening torque loads on the MGB coupling tie-bolts for couplings that have not been modified in accordance with certain ECF modifications. That service bulletin also specifies a recurring 550 hour TIS engine-to-MGB coupling 23,000 RPM input check. The DGAC classified this service telex and service bulletin as mandatory and issued AD 97–303–066(AB), dated October 22, 1997, and AD 86–012–023(A) R4, dated July 29, 1998, in order to assure the continued airworthiness of these helicopters in France. The DGAC also issued AD 97–288–065(AB) for Model AS 332C, AS 332C1, AS 332L, and AS 332L1 helicopters, and AD 97–289–008(AB) for Model AS 332L2 helicopters, both dated October 22, 1998, which require inserting emergency instructions into the RFM regarding actions to take if either the ''OVSP 1'' or ''OVSP 2'' amber warning lights illuminate.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other ECF Model AS 332C, AS 332L, AS 332L1, and AS 332L2 helicopters of the same type design registered in the United States, this AD is being issued to prevent failure of the rotor drive engine-to-MGB coupling, which, if undetected, could result in an engine overspeed leading to an uncontained engine turbine wheel burst and subsequent loss of control of the helicopter. This AD requires inserting an emergency procedure into the RFM regarding actions to take if either the ''OVSP 1'' or ''OVSP 2'' amber warning light illuminates; measuring the vibration levels of the engine-to-MGB shaft; inspecting the torque on the MGB coupling bolts; performing an engine-to-MGB coupling RPM input check; inspecting the spline and splined flanges; and inspecting the vibration level after the reassembly of the coupling. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the

controllability of the helicopter. Therefore, the actions stated in this AD are required prior to further flight and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 4 helicopters will be affected by this proposed AD, that it will take approximately 13.5 work hours to measure the vibration levels; inspect the torque of the MGB coupling bolts; and conduct the other inspections. The average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,240.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–SW–19–AD.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 98–24–21 Eurocopter France: Amendment 39–10906. Docket No. 98–SW–19–AD.

Applicability: Model AS 332C, AS 332L, AS 332L1, and AS 332L2 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the rotor drive engine-to-main gearbox (MGB) coupling, which, if undetected, could result in an engine overspeed leading to an uncontained engine turbine wheel burst and subsequent loss of control of the helicopter, accomplish the following:

(a) For Model AS 332C AS 332L, AS 332L1, and AS 332L2 helicopters, before further flight, insert the following statement into the Emergency Procedures section, Chapter 3, of the Rotorcraft Flight Manual:

''If at any time during flight, either the ''OVSP 1'' or ''OVSP 2'' amber warning light illuminates, even intermittently, reduce the affected engine to ground idle as soon as possible, then shut it down once all of the parameters on the remaining engine have been checked and found to be satisfactory.''

(b) For Model AS 332C, AS 332L, and AS 332L1 helicopters, within 8 hours time-in-service (TIS) and at intervals not to exceed 25 hours TIS thereafter, measure the vibration level of the left and right 23,000 RPM input shaft (engine-to-MGB shaft). Record the mean value of the measured vibration level in the helicopter maintenance records.

(1) If the vibration level exceeds 0.65 inches per second (IPS), perform the inspections described in paragraphs (c) and (d) of this AD before further flight.

(2) If the vibration level is less than or equal to 0.65 IPS, perform the inspections described in paragraphs (c) and (d) of this AD within the next 25 hours TIS.

(c) For Model AS 332C AS 332L, and AS 332L1 helicopters, measure and record the tightening torque on the three engine-to-MGB coupling bolts for the left and right 23,000 RPM input shafts. Accomplish this measurement every 50 hours TIS after the initial inspection if Eurocopter France MODs 0752316 and 0752317 have not been accomplished.

(1) If Eurocopter France MOD 0752316 (tie bolt replacement) has not been accomplished, the tightening torque should be 1.5 to 1.9 m.daN (133 to 168 in.-lbs.) (lubricated with NATO 0.156 oil or equivalent).

(2) If Eurocopter France MOD 0752316 (tie bolt replacement) has been accomplished, the tightening torque should be 1.2 to 1.4 m.daN (106 to 124 in.-lbs.) (lubricated with NATO 0.156 oil or equivalent).

(d) Perform the engine-to-MGB coupling 23,000 RPM input check in accordance with the applicable maintenance manual.

Note 2: Section 63.10.00.602 of the applicable maintenance manual contains

procedures for accomplishing the engine-to-MGB coupling 23,000 RPM input check. Paragraph 5 or the Work Card date code 97–04 is not applicable to the subject of this AD.

(1) While inspecting the splined flanges, inspect the splines for wear. Also inspect the MGB end of the splined flange for impact marks on the end of the splines. If wear exceeds the allowable limits, or if impact marks are found on the end of the splines, replace the splined flange with an airworthy splined flange.

(2) Inspect for the presence of the O-ring on the splined flange.

(3) After accomplishing the engine-to-MGB coupling 23,000 RPM input check and reassembly, measure the vibration level and record the results. If the vibration level remains above 0.65 IPS, conduct the vibration level correction procedure.

Note 3: Maintenance Manual (MET) Work Card 63.20.00.501 provides correction procedures if the vibration level exceeds 0.65 IPS.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(f) Special flight permits will not be issued.

(g) This amendment becomes effective on December 9, 1998.

Note 5: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 97–288–065(AB), AD 97–303–066(AB), AD 97–289–008(AB), all dated October 22, 1997, and AD 86–012–023(A) R4, dated July 29, 1998.

Issued in Fort Worth, Texas, on November 17, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–31329 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–14–AD; Amendment 39–10907; AD 98–24–22]

RIN 2120–AA64

Airworthiness Directives; Agusta A109C Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Agusta A109C helicopters. This action requires, within the next 5 hours time-in-service (TIS), replacing the tail rotor blade grip assemblies (grip assemblies) with modified airworthy grip assemblies. This amendment is prompted by cracks that were found on the grip assemblies during maintenance inspections. This condition, if not corrected, could result in separation of a tail rotor blade and subsequent loss of control of the helicopter.

DATES: Effective December 9, 1998.

Comments for inclusion in the Rules Docket must be received on or before January 25, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–14–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Mr. Shep Blackman, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5296, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Registro Aeronautico Italiano (RAI), which is the airworthiness authority for Italy, recently notified the FAA that an unsafe condition may exist on Agusta A109C helicopters. The RAI advises that cracks on the grip assemblies could result in separation of a tail rotor blade and subsequent loss of control of the helicopter.

Agusta has issued Agusta Bollettino Tecnico No. 109–100, Revision A, dated March 21, 1997 (technical bulletin), which specifies replacement of the grip assemblies. The RAI classified this technical bulletin as mandatory and issued RAI AD 97–084, dated March 28, 1997, in order to assure the continued airworthiness of these helicopters in Italy.

This helicopter model is manufactured in Italy and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RAI has kept the FAA informed of the situation described above. The FAA has examined the findings of the RAI, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Agusta A109C helicopters of the same type design registered in the United States, this AD is being issued to prevent separation of a tail rotor blade and subsequent loss of control of the helicopter. This AD requires replacing the grip assemblies. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability and structural integrity of the helicopter. Therefore, replacing the grip assemblies is required within the next 5 hours TIS, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 17 helicopters will be affected by this proposed AD, that it will take approximately 10 work hours to replace the grip assemblies, and that the average labor rate is $60 per work hour. Required parts will cost approximately $18,286 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $321,062 to replace the grip assemblies on all helicopters.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments,

in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–SW–14–AD.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 98–24–22 Agusta S.p.A.: Amendment 39–10907. Docket No. 98–SW–14–AD.

Applicability: Agusta A109C helicopters, all serial numbers (S/N) through 7670, excluding S/Ns 7630, 7633, 7645, 7651, 7653, 7657, 7661, 7663, 7665, 7667, and 7669, with tail rotor grip assembly (grip assembly), part number (P/N) 109–8131–05–109 or –113, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Within the next 5 hours time in service, unless accomplished previously.

To prevent cracks from developing on the grip assemblies that could result in separation of a tail rotor blade and subsequent loss of control of the helicopter, accomplish the following:

(a) Install airworthy grip assemblies, P/N 109–8131–29–101, or airworthy rotor grip and bushing assemblies, P/N 109–8131–02–129; and airworthy tail rotor blades, P/N 109–8132–01–107.

Note 2: Agusta Bollettino Tecnico No. 109–100, dated March 21, 1997, pertains to the subject of this AD.

(b) This AD revises the Limitations Section of the maintenance manual by establishing new retirement times for the tail rotor hub and blade assembly components as follows:

Part number	Nomenclature	Retirement life (hours)
109–8132–01–1	Blade	3000
109–8131–07–1	Retention Strap Assembly	2000
109–8131–08–1	Strap Pin	5000
109–8131–06–1	Strap Plug	5000
109–0131–06–7	Hub Assembly	3600
109–8131–09–1	Bolt, Retention Strap	5000
109–8131–29–101	Grip Assembly	3000

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on December 9, 1998.

Note 4: The subject of this AD is addressed in Registro Aeronautico Italiano (Italy) AD 97–084, dated March 28, 1997.

Issued in Fort Worth, Texas, on November 17, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–31331 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–157–AD; Amendment 39–10912; AD 97–09–15 R1]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to all Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, that currently requires a one-time inspection to determine the part number of the engage solenoid valve of the yaw damper on the rudder power control unit, and replacement of the valve with a valve having a different part number, if necessary. That AD was prompted by a review of the design of the flight control systems on Model 737 series airplanes. The actions specified by that AD are intended to prevent sudden uncommanded yawing of the airplane due to potential failures within the yaw damper system, and consequent injury to passengers and crewmembers. This amendment makes certain editorial changes to clarify the requirements of the existing AD.

EFFECTIVE DATE: December 29, 1998.

ADDRESSES: Information pertaining to this AD may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tin Truong, Aerospace Engineer, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2764; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by revising AD 97–09–15, amendment 39–10011 (62 FR 24325, May 5, 1997), which is applicable to all Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, was published in the **Federal Register** on November 13, 1997 (62 FR 60808). The action proposed to continue to require a one-time inspection to determine the part number of the engage solenoid valve of the yaw damper on the rudder power control unit (PCU), and replacement of the valve with a valve having a different part number, if necessary. The action also proposed to make certain editorial changes to clarify the requirements of the existing AD.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

Two commenters support the proposal.

Request To Withdraw the Proposed AD

One commenter states that the proposed AD is unwarranted because it is purely editorial rather than technical in nature and requests that it be withdrawn. The commenter states that there is only one solenoid valve of the part number identified in AD 97–09–15 that is used in the yaw damper system, so it should be evident that the valve in question is that of the PCU. In addition, the commenter states that, although the vendor part numbers are not contained in AD 97–09–15, they are easy to convert to the appropriate vendor numbers from cross references located in the Illustrated Parts Catalog (IPC) and the Component Maintenance Manual (CMM). The commenter also states that, although the aircraft maintenance manual chapter referenced in AD 97–09–15 is technically incorrect for certain Model 737–100 and –200 series airplanes, the obvious intent of AD 97–09–15 is to ensure that the specified solenoid valve is installed, and the procedures for replacement should obviously be those applicable for routine valve replacement. The commenter also notes that AD 97–14–04, amendment 39–10061 (62 FR 35068, June 30, 1997), which requires modification of the rudder PCU, will drive the inspection to be done in a shop environment, which would then require the use of the rudder PCU CMM, rather than the aircraft maintenance manual, for this inspection. Further, the commenter states that although the vendor name labeled on the affected parts may vary, the part number, function, and location do not.

The FAA does not concur that the revision is unwarranted. The FAA agrees that there is only one solenoid valve of the part number identified in AD 97–09–15 that is used in the yaw damper system; however, this final rule is clearer and will prevent confusion. In addition, it is not appropriate to determine the vendor part number using the IPC because the IPC is not an FAA-approved document and its use does not ensure correlation of the appropriate part number. Therefore, it is necessary to identify all Boeing and vendor part numbers in the AD to ensure appropriate installation. Also, the FAA does not agree with the commenter that maintenance manual references in AD 97–09–15 are sufficient to ensure the use of proper maintenance procedures for valve installation. The FAA also does not agree with the comment that compliance with AD 97–14–04 will ensure that the required inspection will be done only in a shop environment. This final rule allows operators the flexibility to perform this inspection on the airplane or in the shop. The FAA agrees that, although the vendor name labeled on the affected parts may vary, the part number, function, and location do not; however, this final rule is clearer and will prevent confusion.

Request To Revise Corrective Action

One commenter requests that the requirement to replace a suspect engage solenoid valve prior to further flight be deleted. The commenter states that this requirement is too restrictive and could lead to unnecessary airplane grounding if a valve having the appropriate part number is unavailable. The FAA does not concur. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the practical aspect of installing the required modification within an interval of time that parallels normal scheduled maintenance for the majority of affected operators. The manufacturer has advised that an ample number of required parts will be available for modification of the U.S. fleet within the specified compliance period. No change to the rule is necessary.

Request To Include All Applicable Maintenance Manual Chapters

One commenter states that Boeing Maintenance Manual Chapter 22–12–21 is applicable for some operators of Model 737–100 and –200 series airplanes and that use of the procedures contained in Chapter 22–12–21 should be allowed to accomplish the actions in this AD. The FAA concurs and has revised paragraph (a) of the final rule accordingly.

Request for Credit of Previously Accomplished Work

One commenter requests that, because the proposed revisions to the AD are editorial in nature, a statement be added to the AD to state that work already accomplished on any airplanes affected by AD 97–09–15 should not require additional action. The commenter also requests that all previously approved alternative methods of compliance should remain valid and in effect.

The FAA agrees with the commenter that this AD does not change the required actions of AD 97–09–15 and that any airplanes inspected and modified in accordance with AD 97–09–15 would not require additional action. However, operators are always given credit for work previously performed in accordance with the existing AD by means of the phrase in the compliance

section of the AD that states, ''Required * * * unless accomplished previously.'' Further, no alternative methods of compliance have been approved for the AD 97–09–15. Therefore, no change to the rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 2,675 Boeing Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,091 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required one-time inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $65,460, or $60 per airplane. The requirements of this AD will add no new costs to affected operators.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10011 (62 FR 24325, May 5, 1997), and by adding a new airworthiness directive (AD), amendment 39–10912, to read as follows:

97–09–15 R1 Boeing: Amendment 39–10912. Docket 97–NM–157–AD. Revises AD 97–09–15, Amendment 39–10011.

Applicability: All Model 737–100, –200, –300, –400, and –500 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent sudden uncommanded yawing of the airplane due to potential failures within the yaw damper system, and consequent injury to passengers and crewmembers, accomplish the following:

(a) Perform a one-time inspection of the engage solenoid valve of the yaw damper on the rudder power control unit (PCU) to determine the part number (P/N) of the valve. If any valve having Parker P/N 59600–5011 (Boeing P/N 10–60811–9), Parker P/N 59600–5007 (Boeing P/N 10–60811–3), or Parker P/N 59600–5003 (Boeing P/N 10–60811–1) is installed, prior to further flight, replace it with a valve having Parker P/N 881600–1001 (Boeing P/N 10–60811–13), Sterer P/N 45080–1 (Boeing P/N 10–60811–8), or Sterer P/N 45080 (Boeing P/N 10–60811–3). Accomplish the actions in accordance with procedures specified in Chapters 22–11–61 or 22–12–21 (for Model 737–100 and –200 series airplanes), as applicable; or Chapter 22–12–21 (for Model 737–300, –400, and –500 series airplanes) of the Boeing Maintenance Manual, as applicable. Accomplish the inspection at the earlier of the times specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Within 5 years or 15,000 flight hours after June 9, 1997 (the effective date of AD 97–09–15, amendment 39–10011), whichever occurs first.

(2) At the next time the PCU is sent to a repair facility.

Note 2: Boeing In-Service Activities Report 95–03–2725–10, dated February 16, 1995 (for Model 737–100 and –200 series airplanes), or 95–04–2725–10, dated February 24, 1995 (for Model 737–300, –400, and –500 series airplanes), provides additional information concerning interchangeability of solenoid valve part numbers.

Note 3: Operators should note that, as specified in paragraph (a) of this AD, both the Parker and Sterer P/N's have the same Boeing P/N (10–60811–3). If, upon inspection, Boeing P/N 10–60811–3 is found to be installed, operators must ascertain the vendor P/N. Parts having Boeing P/N 10–60811–3 and Parker P/N 59600–5007 must be replaced and are not considered to be acceptable replacement parts. In addition, some engage solenoid valves may be labeled with only the name ''Bertea,'' rather than ''Parker'' or ''Parker-Bertea.''

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle, ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on December 29, 1998.

Issued in Renton, Washington, on November 18, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31325 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. AEA–23]

Amendment to Class E Airspace; Altoona, PA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Altoona, PA. The development of a Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) at Altoona-Blair County Airport has made this action necessary. This action is intended to provide adequate Class E airspace for instrument flight rules (IFR) operations by aircraft executing the GPS RWY 2 SIAP to Altoona-Blair County Airport.

EFFECTIVE DATE: 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialists, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On October 2, 1998, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace at Altoona, PA, was published in the **Federal Register** (63 FR 53000). The development of the GPS RWY 2 SIAP for Altoona-Blair County Airport requires the amendment of the Class E airspace at Altoona, PA. The notice proposed to amend controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends Class E airspace at Altoona, PA, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the GPS RWY 2 SIAP to Altoona-Blair County Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5 Altoona, PA [Revised]

Altoona-Blair County Airport, Altoona, PA
(Lat. 40°17′47″N., long. 78°19′12″W.)
Altoona, VOR
(Lat. 40°19′32″N., long. 78°18′13″W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Altoona-Blair County Airport and within 8 miles northwest and 4 miles southeast of the Altoona VOR 026° radial, extending from the VOR to 16 miles northeast of the VOR and within 4 miles each side of the 211° bearing from the airport extending from the 6.5-mile radius to 12 miles southwest of the airport.

* * * * *

Issued in Jamaica, New York on November 13, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–31382 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–22]

Amendment to Class E Airspace; Woodbine, NJ

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Woodbine, NJ. The development of Standard Instrument Approach Procedures (SIAP) based on the Global Positioning System (GPS) at Woodbine Municipal Airport has made this action necessary. This action is intended to provide adequate Class E airspace for instrument flight rules (IFR) operations by aircraft executing the GPS RWY 1 SIAP and GPS RWY 19 SIAP to Woodbine Municipal Airport.

EFFECTIVE DATE: 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On October 2, 1998, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace

at Woodbine, NJ, was published in the **Federal Register** (63 FR 52997). The development of the GPS RWY 1 SIAP and GPS RWY 19 SIAP for Woodbine Municipal Airport requires the amendment of the Class E airspace at Woodbine, NJ. The notice proposed to amend controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends Class E airspace at Woodbine, NJ, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the GPS RWY 1 SIAP and GPS RWY 19 SIAP to Woodbine Municipal Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA NJ E5 Woodbine, NJ [Revised]

Woodbine Municipal Airport, NJ
(Lat. 39°13′09″N., long 74°47′41″W.)

That airspace extending upward from 700 feet above the surface within a 9.5-mile radius of the Woodbine Municipal Airport, excluding the portion that coincides with the Ocean City, NJ, and Wildwood, NJ, Class E airspace areas.

* * * * *

Issued in Jamaica, New York on November 13, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–31383 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–33]

Establishment of Class E Airspace; Waynesburg, PA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Waynesburg, PA. The development of a Helicopter Point In Space Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS), and serving the Greene County Airport has made this action necessary. This action is intended to provide adequate Class E airspace for instrument flight rules (IFR) helicopter operations to the airport.

EFFECTIVE DATE: 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On October 5, 1998, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace at Waynesburg, PA, was published in the **Federal Register** (63 FR 53320). The development of a Copter GPS 090 SIAP for the Greene County Airport, Waynesburg, PA, requires the establishment of the Class E airspace for the helicopter approach.

The notice proposed to establish controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to be proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) established Class E airspace at Waynesburg, PA, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the Copter GPS 090 SIAP to the Greene County Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1)

is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5 Waynesburg, PA [New]

Greene County Airport, PA
Point In Space Coordinates
(Lat 39°53′57″N., long. 80°08′51″W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point In Space serving Greene County Airport, excluding that portion that coincides with the Morgantown, WV, Class E airspace area.

* * * * *

Issued in Jamaica, New York on November 13, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–31384 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–32]

Establishment of Class E Airspace; Brookville, PA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Brookville, PA. The development of a Helicopter Point In Space Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS), and serving the Brookville Hospital Heliport has made this action necessary. This action is intended to provide adequate Class E airspace for instrument flight rules (IFR) helicopter operations to the heliport.

EFFECTIVE DATE: 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building, #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On October 5, 1998 a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace at Brookville, PA, was published in the **Federal Register** (63 FR 53323). The development of a Copter GPS 286 SIAP for the Brookville Hospital Heliport, Brookville, PA, requires the establishment of the Class E airspace to accommodate the approach. The notice proposed to establish controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL, are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) establishes Class E airspace at Brookville, PA, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the Copter GPS 286 SIAP to the Brookville Hospital Heliport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designation and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5 Brookville, PA [New]

Brookville Hospital Heliport, PA
Point In Space Coordinates
(Lat. 41°09′21″N., long. 79°04′46″W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point In Space serving Brookville Hospital Heliport, excluding that portion that coincides with the DuBois, PA, Class E airspace area.

* * * * *

Issued in Jamaica, New York on November 13, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–31385 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–35]

Establishment of Class E Airspace; Logan, PA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Logan, PA. The development of a Helicopter Point In Space Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS), and serving the Altoona Hospital Heliport has made this action necessary. This action is intended to provide adequate Class E airspace for instrument flight rules (IFR) helicopter operations to the heliport.

EFFECTIVE DATE: 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On October 5, 1998, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace at Logan, PA, was published in the **Federal Register** (63 FR 53324). The development of a copter GPS 215 SIAP for the Altoona Hospital Heliport requires the establishment of the Class E airspace to accommodate the approach. The notice proposed to establish controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) establishes Class E airspace at Logan, PA, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the Copter GPS 215 SIAP to the Altoona Hospital Heliport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—AMENDED

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 comp., p. 389.

§ 71 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 600 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5 Logan, PA [New]

Altoona Hospital Heliport, PA
Point In Space Coordinates
(Lat. 40°31′52″N., long. 78°22′58″W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point In Space serving Altoona Hospital Heliport, excluding that portion that coincides with the Altoona, PA, Class E airspace area.

* * * * *

Issued in Jamaica, New York on November 13, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–31386 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–34]

Amendment of Class E Airspace; Beaver Falls, PA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Beaver Falls, PA. The development of a Helicopter Point In Space Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS), and serving the University of Pittsburgh Medical Center (UPMC) Beaver Valley Heliport has made this action necessary. This action is intended to provide adequate Class E airspace for instrument flight rules (IFR) operations to the heliport.

EFFECTIVE DATE: 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On October 5, 1998, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend Class E airspace at Beaver Falls, PA, was published in the **Federal Register** (63 FR 53321). The development of a Copter GPS 099 SIAP for the UPMC Beaver Valley Heliport requires the amendment of the Class E airspace to accommodate the approach. The notice proposed to amend controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends Class E airspace at Beaver Falls, PA, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the Copter GPS 099 SIAP to the UPMC Beaver Valley Heliport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5 Beaver Falls, PA [Revised]

Beaver County Airport, Beaver Falls, PA
(Lat. 40°46′21″N., long. 80°23′29″W.)
Ellwood City VORTAC
(Lat. 40°49′31″N., long. 80°12′42″W.)
University of Pittsburgh Medical Center
Beaver Valley Heliport, PA
Point In Space Coordinates
(Lat. 41°36′47″N., long. 80°18′11″W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Beaver County Airport and within 1.8 miles each side of the ellwood City VORTAC 248° radial extending from the 6.4-mile radius to the VORTAC and within a 6-mile radius of the Point In Space serving the University of Pittsburgh Medical Center Beaver Valley Heliport, excluding that portion that coincides with the Pittsburgh, PA, Class E airspace area.

* * * * *

Issued in Jamaica, New York on November 13, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–31374 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–21]

Amendment to Class E Airspace; Malone, NY

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Malone, NY. The development of Standard Instrument Approach Procedures (SIAP) based on the Global Positioning System (GPS) at Malone-DuFort Airport has made this action necessary. This action is intended to provide adequate Class E airspace for instrument flight rules (IFR) operations by aircraft executing the GPS RWY 5 SIAP and GPS RWY 23 SIAP to Malone-DuFort Airport.

EFFECTIVE DATE: 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On October 2, 1998, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR 71) to amend the Class E airspace at Malone, NY, was published in the **Federal Register** (63 FR 53002). The development of the GPS RWY 5 SIAP and GPS RWY 23 SIAP for Malone-DuFort Airport requires the amendment of the Class E airspace at Malone, NY. The notice proposed to amend controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending

upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends Class E airspace at Malone, NY, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the GPS RWY 5 SIAP and GPS RWY 23 SIAP to Malone-DuFort Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA NY E5 Malone, NY [Revised]

Malone-DuFort Airport, NY
(Lat. 44°51′13″N., long. 74°19′43″W.)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Malone-DuFort Airport, excluding the airspace within Canada.

* * * * *

Issued in Jamaica, New York on November 13, 1998

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–31378 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–18]

Amendment to Class E Airspace; Poughkeepsie, NY

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule

SUMMARY: This action amends Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Poughkeepsie, NY. The development of Standard Instrument Approach Procedures (SIAP) based on the Global Positioning System (GPS) at Sky Acres Airport has made this action necessary. This action is intended to provide adequate Class E airspace for instrument flight rules (IFR) operations by aircraft executing the GPS RWY 17 SIAP and GPS RWY 35 SIAP to Sky Acres Airport.

EFFECTIVE DATE: 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On October 2, 1998, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace at Poughkeepsie, NY, was published in the **Federal Register** (63 FR 52998). The development of the GPS RWY 17 SIAP and GPS RWY 35 SIAP for Sky Acres Airport requires the amendment of the Class E airspace at Poughkeepsie, NY. The notice proposed to amend controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace area designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends Class E airspace at Poughkeepsie, NY, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the GPS RWY 17 SIAP and GPS RWY 35 SIAP to Sky Acres Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, EO 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA NY E5 Poughkeepsie, NY [Revised]

Dutchess County Airport, Poughkeepsie, NY
(Lat. 41°37′36″N., long. 73°53′02″W.)
Sky Acres Airport, NY
(Lat. 41°42′27″N., long. 73°44′17″W.)
Stormville Airport, NY
(Lat. 41°34′37″N., long. 73°43′56″W.)

That airspace extending upward from 700 feet above the surface within a 8.7-mile radius of Dutchess County Airport and within a 13.5-mile radius of Dutchess County Airport extending clockwise from a 040° to a 215° bearing from the airport and within a 12-mile radius of Sky Acres Airport and within a 9.2-mile radius of Stormville Airport, excluding the portions that coincide with the Newburgh, NY, Red Hook, NY, Class E airspace areas.

* * * * *

Issued in Jamaica, New York on November 13, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–31379 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–31]

Amendment of Class E Airspace; Grove City, PA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Grove City, PA. The development of a Helicopter Point In Space Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS), and serving the United Community Hospital Heliport has made this action necessary. This action is intended to provide adequate Class E airspace for instrument flight rules (IFR) operations to the heliport.

EFFECTIVE DATE: 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On October 5, 1998, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend Class E airspace at Grove City, PA, was published in the **Federal Register** (63 FR 53322). The development of a Copter GPS 244 SIAP for the United Community Hospital Heliport, requires the amendment of the Class E airspace to accommodate the approach. The notice proposed to amend controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends Class E airspace at Grove City, PA, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the Copter GPS 244 SIAP to the United Community Hospital Heliport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5 Grove City, PA [Revised]

Grove City, Airport, PA
(Lat. 41°08′46″N., long. 80°09′58″W.)
United Community Hospital Heliport, PA
Point In Space Coordinates
(Lat. 41°10′39″N., long, 80°04′23″W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Grove City Airport and within a 6-mile radius of the Point In Space serving the United Community Hospital Valley Heliport.

* * * * *

Issued in Jamaica, New York on November 13, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division Eastern Region.

[FR Doc. 98–31380 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 98–AEA–30]

Amendment to Class E Airspace; East Hampton, NY

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet Above Ground Level (AGL) at East Hampton, NY. The development of Standard Instrument Approach Procedures (SIAP) based on the VHF Omnidirectional Radio Range (VOR), Distance Measuring Equipment (DME), Area Navigation (RNAV) and Global Positioning System (GPS) at East Hampton Airport, NY, has made this action necessary. This action is intended to provide adequate Class E airspace for instrument flight rules (IFR) operations by aircraft executing the VOR/DME RNAV or GPS RWY 28 SIAP, VOR/DME RNAV or GPS RWY 10 SIAP and VOR or GPS–A SIAP to East Hampton Airport.

EFFECTIVE DATE: 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On October 2, 1998, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace at East Hampton, NY, was published in the **Federal Register** (63 FR 53001). The development of the VOR/DME RNAV or GPS RWY 28 SIAP, VOR/DME RNAV or GPS RWY 10 SIAP and VOR or GPS–A SIAP for East Hampton Airport requires that amendment of the Class E airspace at East Hampton, NY. The notice proposed to amend controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends Class E airspace at East Hampton, NY, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the VOR/DME RNAV or GPS RWY 28 SIAP, VOR/DME RNAV or GPS RWY 10 and VOR or GPS–A SIAP to East Hampton Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Polices and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA NY E5 East Hampton, NY [Revised]

East Hampton Airport, NY
(Lat. 40°57′35″N., Long 72°15′07″W.)
Hampton VORTAC
(Lat. 40°55′08″N., Long 72°19′00″W.)

That airspace extending upward from 700 feed above the surface within a 6.5-mile radius of East Hampton Airport and within 3.5 miles north and 5.3 miles south of the 089° bearing from the airport extending from the 6.5-mile radius to 15 miles east of the airport and within 3.5 miles northwest and 5.3 miles southeast of the Hampton VORTAC 230° radial extending from the 6.5-mile radius to 10 miles southwest of the VORTAC, excluding the portion of that coincides with the Westhampton Beach, NY, Class E airspace area.

* * * * *

Issued in Jamaica, New York on November 13, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–31381 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 107 and 108

[Docket Nos. 28859; Amendment No. 107–12, 108–17]

RIN 2120–AG32

Employment History, Verification and Criminal History Records Check

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction.

SUMMARY: The FAA is correcting the preamble of a previously published final rule regarding the regulations that require an access investigation for unescorted access privileges to security areas at airports. The corrections are, in most cases, typographical; however by this correction the FAA is also updating the information on the cost of the fingerprint processing. No changes to the previously published amendatory language are included.

EFFECTIVE DATE: November 23, 1998.

FOR FURTHER INFORMATION CONTACT: Linda Valencia, Telephone (202) 267–3413.

Correction

In rule FR Doc. 98–25210 published on Thursday, September 24, 1998 (63 FR 51204), make the following corrections:

1. On page 51206, in the third column, second line from the bottom, ''parties'' should read ''party's''.

2. On page 51209, in the first column, in the ninth line from the top, ''of'' should read ''for''.

3. On page 51210, in the first column, sixth line from the bottom, insert the words ''of the'' between the words ''Part 2'' and ''investigative files.''

4. On page 51216, in the first column, the fourth paragraph, second line, ''$28'' should read ''$29''; in the same paragraph, in the third line from the end of the paragraph, ''$4'' should read ''$5''.

Issued in Washington, D.C. on November 10, 1998.

Anthony Fainberg,

Director, Office of Civil Aviation Security Policy and Planning.

[FR Doc. 98–31377 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8785]

RIN 1545–AU70

Classification of Certain Transactions Involving Computer Programs; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to Treasury Decision 8785, which was published in the **Federal Register** on Friday, October 2, 1998 (63 FR 52971) relating to the tax treatment of certain transactions involving the transfer of computer programs.

DATES: This correction is effective October 2, 1998.

FOR FURTHER INFORMATION CONTACT: Anne Shelburne, (202) 874–1305 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 861 of the Internal Revenue Code.

Need for Correction

As published, TD 8785 contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8785), which were the subject of FR Doc. 98–26475, is corrected as follows:

1. On page 52971, column 1, in the preamble under the caption heading **FOR FURTHER INFORMATION CONTACT**, line 1, the language ''Anne Shelburne, (202) 622–3880 (not a'' is corrected to read ''Anne Shelburne, (202) 874–1305 (not a''.

2. On page 52975, column 3, in the preamble under the paragraph heading ''*8. Services and Know-How*'', second paragraph, lines 21 through 25, the language ''secret protection. Know-how is considered a property interest under applicable law, and only if the know-how is specifically contracted for between the parties. These additional'' is corrected to read ''secret protection. These additional''.

§ 1.861–18 [Corrected]

3. On page 52982, column 1, § 1.861–18(i)(4) *Example 1*, line three from the bottom of the paragraph, the language ''A is not required to change from its accrual'' is corrected to read ''A is not required to change from its''.

4. On page 52982, column 2, § 1.861–18(i)(4) *Example 2*, line five from the bottom of the paragraph, the language ''A is not required to change from its accrual'' is corrected to read ''A is not required to change from its''.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 98–31285 Filed 11–23–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–98–097]

Drawbridge Operation Regulations; New Jersey Intracoastal Waterway; Grassy Sound Channel

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District has issued a temporary deviation from the regulations governing the operation of the Route 47 (George A. Reading) Bridge across the Intracoastal Waterway (ICW), mile 108.9, in Wildwood, New Jersey. Beginning at 7 a.m. on December 4, through 7 a.m. on December 6, 1998, the bridge will be maintained in the closed position. This closure is necessary to facilitate demolition and reconstruction of the bridge's bascule span.

DATES: This deviation is effective from 7 a.m. on December 4, 1998 until 7 a.m. on December 6, 1998.

FOR FURTHER INFORMATION CONTACT:

Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION: On October 9, 1998, the Coast Guard published a Temporary Final Rule entitled ''Drawbridge Operation Regulations; New Jersey Intracoastal Waterway; Grassy Sound Channel'' in the **Federal Register** (63 FR 54353). That regulation, effective from October 19, 1998 to 5 p.m. on May 14, 1999, requires two-hours advance notice for bridge openings 24 hours a day to allow the contractor to facilitate sandblasting and painting operations.

On November 4, 1998, a letter was forwarded to the Coast Guard by the contractor requesting a temporary deviation from the current operation of the bridge. The proposed bridge work will involve the demolition and reconstruction of the bridge deck and superstructure, thereby immobilizing the operation of the bascule span entirely. Additionally, tugboats, cranes, and barges positioned at the site may impede vessel traffic that could pass under the bridge.

The Coast Guard has informed the known commercial users of the waterway of the bridge closure so that these vessels can arrange their transits to avoid being negatively impacted by the temporary deviation.

From 7 a.m. on December 4, until 7 a.m. on December 6, 1998, this deviation allows the Route 47 (George A. Reading) Bridge across Grassy Sound Channel, ICW mile 108.9 at Wildwood, to remain closed.

Dated: November 13, 1998.

Roger T. Rufe, Jr.,

Vice Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 98–31373 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 64–71

Title 40 CFR Parts 64–71; Republication

CFR Correction

Title 40 CFR parts 64 to 71, revised as of July 1, 1998, is being republished in its entirety. The earlier issuance inadvertently omitted the last two lines of text from § 70.5 (c)(1) through the first five lines of (c)(8)(iii)(B). The omitted text should replace the text on page 98.

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–6192–9]

RIN 2060–AG30

Standards of Performance for New Stationary Sources: Residential Wood Heaters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: On September 11, 1996, EPA proposed amendments to the Standards of Performance for New Residential Wood Heaters, 40 CFR part 60, subpart AAA, as part of a larger proposal to reduce recordkeeping and reporting burden of numerous EPA regulations. The proposed wood heater amendments were intended to make needed corrections and clarifications to the wood heater rule. Some of the proposed clarifications are being promulgated under the final action for the recordkeeping and reporting burden reduction. This action announces the EPA's final decisions on one aspect of those proposed amendments.

The wood heater rule is being revised to expand the conditions under which EPA can initiate a ''recall'' of wood heaters from distributors and retailers by prohibiting sales other than sales back to the manufacturer. The rule as originally promulgated specifically authorized EPA to initiate such a ''recall'' due to the knowing submission of false or inaccurate information or other fraudulent acts. This action amends the rule to allow EPA to initiate a recall, not only in cases of fraud, but also if it is found that the original certification test was invalid, irrespective of fraud. This action is being taken to ensure that further sales to consumers of wood heaters that should not have been originally certified are prohibited. This action does not affect wood heaters already sold to consumers.

EFFECTIVE DATE: November 24, 1998. See the Supplementary Information section concerning judicial review.

ADDRESSES: *Docket.* Docket No. A–95–50, containing information considered by the EPA in development of the promulgated amendment, is available for public inspection between 8 a.m. and 5:30 p.m., Monday through Friday at the following address in room M–1500, Waterside Mall (ground floor): U. S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC–6102), 401 M Street SW., Washington, DC 20460; telephone: (202) 260–7549. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. Marshall; Wood Heater Program; Manufacturing, Energy and Transportation Division (2223A); U.S. EPA, 401 M Street, S.W., Washington, D.C. 20460; telephone number (202) 564–7021.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

The regulated category and entities potentially affected by this action include:

Category	Examples of regulated entities
Industry	Residential wood heater manufacturers and commerical dealers

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your business is regulated by this action, you should carefully examine the applicability criteria in § 60.530 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

A. Federal Register Proposal

On September 11, 1996 (61 FR 47840), EPA proposed amendments to the Standards of Performance for New Residential Wood Heaters, 40 CFR part 60, subpart AAA (variously referred to as the ''wood heater'' or ''woodstove'' rule or NSPS), as part of a larger proposal to reduce recordkeeping and reporting burden of numerous EPA regulations. Some of the proposed provisions pertaining to residential wood heaters dealt with clarifications to definitions and labeling of wood heaters. These changes will be addresed in the recordkeeping and reporting burden reduction final action.

Today's final rule addresses another proposed change to the wood heater rule, deletion of the ''Prohibitions'' section, § 60.538. This proposed change prompted significant comments that the Agency felt should be dealt with separately from the clarifications to the definitions and labeling provisions.

B. Public Participation

One comment letter, from the Hearth Products Association, was received on the wood heaters proposal. The EPA's responses to the comments received on the proposed deletion of the ''Prohibitions'' section can be found in this preamble under IV, ''Summary of Comments and Responses on the Proposal.''

III. Summary of Rule Amendments

The final amendments revise the ''recall'' provision of § 60.538(e). The original provision prohibited the sale of wood heaters to anyone except back to the manufacturer (hence the use of the word ''recall'') in the situation where the certificate was revoked for the knowing submission of false or inaccurate information or for other fraudulent acts. The amended rule prohibits sales except back to the manufacturer in the case where the certificate was revoked because the original certification test was determined to be invalid, as well as in the case of fraud, as previously described. In each case, the sales prohibition takes effect on the date that the ''commercial owner'' (e.g., the distributor or dealer) receives notice of the revocation.

IV. Summary of Comments and Responses on the Proposal

A. Was There Sufficient Notice and Comment Regarding the Proposed Changes?

Comment: The proposal did not provide sufficient notice and time for comment. The woodstove amendments were proposed within a package published in the **Federal Register** to ''reduce unnecessary recordkeeping and reporting burdens,'' entitled ''Recordkeeping and Reporting Burden Reduction''. The public was not alerted

to the fact that this rule contained substantive revisions to the woodstoves NSPS. The industry only became aware of these proposed revisions near the end of the comment period.

Response: The amendments were proposed September 11, 1996 in the **Federal Register** (61 FR 47840). There are no additional notification requirements under the Administrative Procedures Act. Table 1, which appeared on the second page of the preamble, listed the NSPS for New Residential Wood Heaters as one of the rules to be amended. The deletion of § 60.538 was discussed in the preamble and was included in the portion of the notice that set forth the proposed changes to the regulations. To ensure that the industry was aware of the proposed amendments, EPA contacted the Hearth Products Association (HPA) (formerly known as the Wood Heating Alliance, a major trade group for wood heater manufacturers which represented many manufacturers during the regulatory negotiation of the original rule) before the end of the comment period and gave the HPA additional time to comment on the proposal. EPA also contacted representatives of environmental organizations that had previously expressed interest in the wood heater NSPS rule to ensure that they were aware of the proposed changes. Sufficient opportunity to comment was extended to all interested parties. In addition, several meetings were held with HPA representatives to discuss and clarify their comments prior to EPA developing the final rule.

B. Can EPA Unilaterally Revise a Rule Developed Through Formal Regulatory Negotiation?

Comment: A rule developed through a consensus process by way of regulatory negotiation should not be unilaterally changed by EPA. Not consulting with the original stakeholders is an indefensible breach of the negotiated understanding.

Response: Developing a rule through a formal negotiation process does not forever tie EPA's hands when changes to the rule are warranted. The Clean Air Act (CAA) requires EPA to review and, if appropriate, revise NSPS every 8 years (CAA section 111(b)(1)(B)). Indeed, the Agency has chosen not to revise the woodstoves emissions limits since the rule was promulgated in 1988. The Agency still believes that the current limits remain appropriate and anticipates no revisions to these limits in the foreseeable future.

However, EPA believes it is appropriate to revise the rule when it identifies problems that may interfere with proper enforcement and compliance. On June 29, 1995 (60 FR 33915), EPA removed numerous provisions from the rule that were obsolete; thus, eliminating potentially confusing provisions for manufacturers in meeting the requirements. Likewise, EPA believes that today's revisions are necessary improvements that will enhance compliance and correct deficiencies in the rule that inhibit the Agency's ability to properly enforce the rule. From time to time, necessary rule changes become apparent and the EPA has the authority to make such changes through the normal rulemaking process, regardless of how the rule was originally developed. By the same token, EPA recognizes that a rule developed through a regulatory negotiation balances the diverse needs of the negotiators, and consultation with all the various stakeholders affected by the changes is important. As mentioned previously, EPA notified the commenter, as well as various environmental groups, to seek their input on the proposed changes. In addition, EPA has met several times with the commenter.

C. Is a Regulatory Flexibility Analysis Required in Accordance With the Small Business Regulatory Enforcement Fairness Act (SBREFA)?

Comment: Because of the impact on small businesses (manufacturers, wholesalers, and retailers), EPA must assess the impacts in accordance with the SBREFA requirements.

Response: Many, if not most, wood heater manufacturers, distributors, and dealers are considered to be ''small entities'' under SBREFA. EPA has determined that the amendment will not have a significant economic impact on a substantial number of small entities (wood heater manufacturers, distributors, and dealers). Accordingly, it is not necessary to prepare a regulatory flexibility analysis in connection with these amendments.

In analyzing the costs and potential impacts of the amendments on small entities, EPA presumes that the small entities comply with all existing statutory or regulatory requirements that are applicable to them. Furthermore, if a rule is being amended, EPA assesses only the incremental cost of the amendment. The wood heaters NSPS requires manufacturers to submit ''documentation pertaining to a valid certification test'' as part of the application for a certificate of compliance (40 CFR 60.533(b)(4)). Thus, assuming that woodstove manufacturers are complying with this requirement, there is no cost as a result of the amendment, which establishes enforcement consequences of a subsequently discovered invalid certification test. Therefore, there is no significant adverse economic impact on any small entity.

Even if one were to regard the consequences of the discovery of an invalid certification test as an impact resulting from today's amendments, there would still be no significant adverse economic impact on a substantial number of small entities. ''Recalls'' of model lines have been rare in the 10 years since the woodstoves rule was first issued. Over the past 10 years, EPA has certified over 460 model lines. Currently, there are over 200 certified model lines produced by 67 manufacturers. In 10 years, only 2 model lines (each from a different company) have ever been recalled from commercial owners (e.g., dealers or distributors) by the manufacturers.

As originally promulgated, § 60.538(e) prohibits the sale (other than to the manufacturer) by commercial owners (e.g., distributors or dealers) of woodstoves for which EPA has revoked the certificate of compliance due to fraud, once the Agency has given notice of the revocation. The proposed deletion of § 60.538(e) would have meant that commercial owners selling model lines for which the certification had been revoked could not have continued to sell with the assurance that their inventory was in compliance with the standard, regardless of the reason for the revocation. In this final rule, rather than deleting § 60.538(e), EPA is choosing instead to amend the existing language to focus more directly on sale of model lines for which the original certification test is discovered to be invalid. The Agency believes that this will provide greater clarity than the proposed deletion.

Under the amendments, the sales prohibition in § 60.538(e) is being expanded to include model lines for which the certificate is revoked based on a finding that the original certification test was invalid, regardless of fraud. The Agency believes that if the original certification test was invalid, continued sale of the model lines would be inconsistent with the intent of the standard. Based on our previous experience, it is expected that such sales prohibitions at the commercial owner level will remain relatively rare, if any at all occur. The only suspension or revocations that have occurred to date are those associated with fraudulent acts. There have been no certification suspensions or revocations either as a result of random compliance audits or selective enforcement audits conducted

under § 60.533(p)(1), or as the result of invalid original certification tests that have not involved fraud.

Potential economic impacts of any recall that might occur due to today's amendment were considered for both manufacturers and commercial owners. No significant impacts were identified. In assessing the potential economic impact of a recall, EPA considered the impact on the manufacturers of the 2 model lines recalled due to fraud. One of the manufacturers had revenues in excess of $15 million per year. Only 34 wood heaters were recalled, representing far less than 1 percent of sales. The other manufacturer had sales significantly more than the first manufacturer, and the recall involved 107 wood heaters, still less than 1 percent of sales. The EPA does not consider an economic impact of less than 1 percent of sales as significant, and consequently, EPA does not expect a recall to have a significant adverse economic impact on such manufacturers. In addition, most manufacturers produce more than one model line, and most commercial owners carry no more inventory than a heating season's worth (about 3 months) of woodstoves, further minimizing the impact on the manufacturer of a recall of a single model line. Furthermore, many manufacturers sell other products besides woodstoves; EPA's Regulatory Flexibility Analysis in 1986 (Docket No. A–84–49, item No. II–A–14) for the original regulation indicated that less than half of the total revenues for most manufacturers were from woodstoves sales.

The impact on commercial owners, too, is also expected to be minimal, affecting only about 3 months inventory of a single model line. Most commercial owners carry more than one model line and sell other products. Also, many manufacturers have ''swap out'' arrangements with their customers to substitute the recalled stoves with certified stoves.

Even if EPA assumed the impact on small entities was economically significant (not borne out by past experience), a substantial number of small businesses would not be affected, if any. As stated above, only 2 out of 67 manufacturers have been affected in the last 10 years by the original recall provision. The Agency does not consider 2 out of 67 manufacturers to be a substantial number. There is no reason to expect a sudden increase in the number of invalid certification tests discovered subsequent to certification that do not involve fraud, where none have been discovered before. Consequently, the EPA can determine that there will be no significant adverse economic impact on a substantial number of small entities as a result of this amendment.

Moreover, in exercising its recall authority, EPA will consider the potential economic harm resulting from a recall, as well as the potential environmental problem the recall would address. The Agency would consider, for example, the number of wood heaters in the channels of trade, and the extent to which the model line in question exceeds applicable emission limits.

D. What Changes Are Being Made to the Rule?

Comment: The commenter objected to the deletion of § 60.538 (''Prohibitions'') from the rule for several reasons. The commenter's primary concern was that manufacturers, distributors, and retailers would be affected by ''recalls'' where fraud was not the reason for revocation of the compliance certification. Another concern was that the deletion of paragraphs (f), (g), (h), and (i) of § 60.538 would expand the liability exposure to homeowners owning a stove that did not meet emissions limits; the existing rule's prohibitions limited homeowners' liability to improper installation or operation, catalyst deactivation or removal, physical alteration of the woodstove, and altering or removing the permanent label.

The commenter did not agree with the reasons provided by the Agency for deleting the ''Prohibitions'' section. In response to the statement in the proposal preamble that the prohibitions section would not allow a claim of violation of the removable label requirement unless the wood heater in question also had a permanent label, the commenter stated that if the wood heater had no permanent label, EPA could bring a claim of violation of the requirement to have a permanent label. In response to the statement that the prohibitions section does not make complying with the quality assurance provisions unlawful, the commenter stated that shipping stoves while out of compliance with the quality assurance provisions runs afoul of the labeling requirements and is grounds for certificate revocation. Finally, the commenter disagreed that eliminating other paragraphs would clarify and simplify the rule, and that these other paragraphs were duplicative or otherwise unnecessary.

Response: The Agency agrees with the commenter on some of these points and accordingly has decided to retain most of § 60.538 in its original form. Although the Agency disagrees that homeowners would be exposed to greater liability if paragraphs (f), (g), (h), and (i) of § 60.538 were removed, retaining these paragraphs is helpful in clarifying homeowners' compliance obligations.

The Agency also agrees with the commenter that every wood heater that has a removable label must also have a permanent label (§ 60.536(a), (i), (j)). Sale of wood heaters not bearing a permanent label is prohibited in § 60.538 (b) and (c). Accordingly, if a wood heater has neither a removable label nor a permanent label, a claim of violation can be based on sale of the heater without a permanent label. Therefore, the dependence of § 60.538(d) on the existence of a permanent label does not preclude enforcement actions where stoves are sold with neither a temporary nor a permanent label. Accordingly, the provisions of § 60.538 regarding labeling are being retained.

The Agency agrees that the lack of a specific provision regarding the quality assurance requirements in the ''Prohibitions'' section does not affect the enforceability of the quality assurance procedures. Section 60.533(o) clearly lays out the requirements and procedures for conducting a quality assurance program. These requirements and procedures are enforceable and failure to comply with them would be a violation. Failure to meet the tolerances or emission limits during the quality assurance program would not be a violation of the rule, but failure to take remedial measures would be (§ 60.533(o)(4)). No amendment to the rule is necessary to enforce these provisions. Furthermore, as the commenter points out, compliance with the quality assurance requirements is required by other aspects of the regulation. For example, a labeling statement under § 60.536 (b) or (c) constitutes a representation by the manufacturer that the manufacturer was, at the time the label was affixed, conducting a conforming quality assurance program. In addition, EPA may use a manufacturer's failure to conduct a conforming quality assurance program as a ground to revoke certification under § 60.533(l). Furthermore, in applying to EPA for a certificate of compliance, a manufacturer must include a statement that it will conduct a conforming quality assurance program for the model line in question (§ 60.533(b)(6)). Because the lack of a specific provision regarding the quality assurance requirements in the ''Prohibitions'' section does not affect the enforceability of the quality

assurance requirements, the Agency has decided not to alter the ''Prohibitions'' section in this regard.

Although some simplification and removal of duplication could be achieved in § 60.538, EPA has decided not to amend the provisions of this section, except as discussed below with regard to § 60.538(e), in order to avoid any confusion that might arise from their deletion.

Section 60.538(e), as originally promulgated, provides that the Agency may prohibit ''commercial owners'' (e.g., dealers and distributors) from selling, other than to the manufacturer, wood heaters in a model line whose certificate has been revoked ''* * * for the knowing submission of false or inaccurate information or other fraudulent acts.'' The prohibition takes effect on the date that the commercial owner receives notice of the revocation. By prohibiting sales of such appliances other than to the manufacturer, the provision in effect authorizes EPA to require a recall of wood heaters that are still in the distribution chain. It has no impact on wood heaters that have already been sold to consumers.

During 1996, a serious incident involving fraudulent conduct by an accredited testing laboratory had to be addressed by the Agency. The laboratory in question was found to have falsified 11 certification test reports that were submitted to the Agency, upon which certificates were granted. The laboratory director was prosecuted criminally, plead guilty, was sentenced to a lengthy period of probation, and was ordered to perform substantial community service. The manufacturers in question cooperated with the Agency in attempting to rectify this situation, ultimately conducting a number of new certification tests and, in the case of 2 model lines, voluntarily agreeing to recall appliances in the channels of trade.

The Agency conducted a review of its response to this situation, and decided that it needed to expand its recall authority, so that it was clear that it covered situations where a certification had been issued based on an invalid certification test, irrespective of the presence of fraud. The Hearth Products Association (HPA) has acknowledged in meetings with the Agency that the hearth industry (which includes wood heater manufacturers) has an important interest in assuring the integrity of its products, and that clarifying EPA's recall authority could play an important role in this regard.

The rule has always required a finding that a valid certification test has shown that a wood heater representative of the model line complies with the emission limits before a certification can be issued (§ 60.533(e)(1)(i)). Section 60.533(f)(4) of the rule defines a valid certification test as one conducted according to the prescribed test methods and procedures, among other requirements. Under today's promulgated amendments, the Agency is establishing its authority to prohibit sales to consumers if a certification was revoked based on a finding that the original certification test was not valid.

The basis for such a finding would be problems or irregularities with the certification test or its documentation. Other information could be used to supplement the finding. The finding could be based on incorrect calculations or typographical errors, for example, that if corrected would not have enabled a model line to be certified. Other examples include anomalies with the methods and procedures, such as incorrect emission sample gathering or improper wood load. However, the Agency would not consider minor infractions of the original certification test that would have little or no influence on emissions as the basis for a finding that the certification test was not valid. Historically, the Agency has used its judgment on insignificant problems or resolved them through discussions with the accredited laboratory or the manufacturer, recognizing the expense of retesting and the fact that many manufacturers are small businesses with limited resources.

V. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the actions taken by this final amendment is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this action. Under section 307(b)(2) of the CAA, the requirements that are subject to today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

VI. Administrative Requirements

A. Docket

The docket is an organized and complete file of information considered by the EPA in the development of a rulemaking. The docket is a dynamic file because information is added throughout the rulemaking development process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket (except for interagency review materials) will serve as the record in case of judicial review. [See section 307(d)(7)(A) of the Act.] The official rulemaking record, including all public comments received on the proposed amendments, is located at the address in the **ADDRESSES** section at the beginning of this document. The docket number for this rulemaking is A–95–50.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined by OMB and EPA that today's action is not a ''significant regulatory action'' within the meaning of the Executive Order.

C. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments,

and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for the proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of the EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Finally, section 204 of the UMRA requires the Agency to develop a process to allow elected state, local, and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

The EPA has determined that these amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate or the private sector in any one year. Thus, today's amendments are not subject to the requirements of sections 202, 204, and 205 of the UMRA.

The EPA has determined that these amendments contain no regulatory requirements that might significantly or uniquely affect small governments. No small government entities have been identified that are affected by these amendments. Therefore, today's amendments are not subject to the requirements of section 203 of the UMRA.

E. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. As explained previously in the response to comments section, the Agency looks only at the incremental impact of the amendments and assumes that regulated entities are in compliance with previously promulgated requirements. Assuming that manufacturers are in compliance with the requirement to submit ''documentation pertaining to a valid certification test'' as part of their application for a certificate of compliance (40 CFR 60.533(b)(4)), there will be no impact on any small manufacturer. Even if one were to regard the consequences of the discovery of an invalid certification test as an impact resulting from today's amendments, there would still be no significant adverse economic impact on a substantial number of small entities. Only 2 out of 67 manufacturers have had to recall model lines due to inappropriate certification in the past 10 years. EPA has not identified any inappropriate certifications that have not involved fraud and hence does not expect these amendments to lead to an increase in the number of recalls. In addition, the economic impact of the recalls has been minimal, affecting less than one percent of sales for each of the manufacturers that has recalled a model line.

F. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

G. Paperwork Reduction Act

Today's action does not impose any new information collection burden. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in these regulations under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0161 (ICR no. 1176.05).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub. L. No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary

consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Today's final amendment does not involve any technical standards; therefore, EPA did not consider the use of any voluntary consensus standards.

I. Executive Order 13045

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is ''economically significant'' as defined under Executive Order 12866, and (2) EPA determines addresses an environmental health or safety risk that has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045 because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

J. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's amendment does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, Heaters.

Dated: November 18, 1998.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7413, 7414, 7416, 7429, 7601 and 7602.

2. Amend § 60.533 to revise paragraph (l)(1)(ii) to read as follows:

§ 60.533 Compliance and certification.

* * * * *

(l) * * *

(1) * * *

(ii) A finding that the certification test was not valid. The finding must be based on problems or irregularities with the certification test or its documentation, but may be supplemented by other information.

* * * * *

3. Amend § 60.538 to revise paragraph (e) to read as follows:

§ 60.538 Prohibitions.

* * * * *

(e)(1) In any case in which the Administrator revokes a certificate of compliance either for the knowing submission of false or inaccurate information or other fraudulent acts, or based on a finding under § 60.533(l)(1)(ii) that the certification test was not valid, he may give notice of that revocation and the grounds for it to all commercial owners.

(2) From and after the date of receipt of the notice given under paragraph (e)(1) of this section, no commercial owner may sell any wood heater covered by the revoked certificate (other than to the manufacturer) unless

(i) The wood heater has been tested as required by § 60.533(n) and labeled as required by § 60.536(g) or

(ii) The model line has been recertified in accordance with this subpart.

* * * * *

[FR Doc. 98–31397 Filed 11–23–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50633A; FRL–6044–6]

RIN 2070–AB27

Revocation of Significant New Use Rules for Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking significant new use rules (SNURs) for 6 substances promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for certain chemical substances based on new data. Based on the new data the Agency no longer finds that activities not described in the corresponding TSCA section 5(e) consent order or the premanufacture notice (PMN) for these chemical substances may result in significant changes in human or environmental exposure.

DATES: This rule is effective December 24, 1998.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–531, 401 M St., SW., Washington, DC 20460, telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document are available from the EPA Home Page at the **Federal Register**-Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/).

In the **Federal Register** referenced for each substance, OPPTS–50569A, September 18, l989 (54 FR 38381); OPPTS–50582, August 15, 1990 (55 FR 33296); OPPTS–50613, October 4, 1993 (58 FR 51694); OPPTS–50623, December 2, 1996 (61 FR 63726) (FRL–4964–3); and OPPTS–50628, January 22, l998 (63 FR 3393) (FRL–5720–3), EPA issued a SNUR establishing significant new uses for the substances. Because of additional

data EPA has received for these substances, EPA is revoking these SNURs.

I. Background

The Agency proposed the revocation of these SNURs in the **Federal Register** of September 16, 1998 (63 FR 49518) (FRL–6024–9). The background and reasons for the revocation of each individual SNUR are set forth in the preamble to the proposed revocation. The comment period closed on October 16, 1998. The Agency received no comments concerning the proposed revocations. Therefore, EPA is revoking these rules.

II. Rationale for Revocation of the Rule

During review of the PMNs submitted for the chemical substances that are the subject of this revocation, EPA concluded that regulation was warranted based on available information that indicated activities not described in the TSCA section 5(e) consent orders or the PMNs might result in significant changes in human or environmental exposure. Based on these findings, SNURs were promulgated.

EPA has revoked those TSCA section 5(e) consent orders that are the bases for these SNURs and no longer finds that activities other than those described in the TSCA section 5(e) consent orders or the PMNs may result in significant changes in human or environmental exposure. The revocation of SNUR provisions for these substances is consistent with the findings set forth in the preamble to the proposed revocation of each individual SNUR.

Therefore, EPA is revoking the SNUR provisions for these chemical substances. When this revocation becomes final, EPA will no longer require notice of intent to manufacture, import, or process these substances, except in the case where the PMN submitter has formally withdrawn the PMN. In addition, export notification under section 12(b) of TSCA will no longer be required.

III. Public Record

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number OPPTS–50633A (including comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC.

IV. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This rule revokes or eliminates an existing regulatory requirement and does not contain any new or amended requirements. As such, the Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This rule does not impose any requirements, it does not contain any information collections subject to approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or require any other action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994) or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency has determined that SNUR revocations, which eliminate requirements without imposing any new ones, have no adverse economic impacts. The Agency's generic certification for SNUR revocations appears on June 2, 1997 (62 FR 29684) (FRL–5597–1) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This rule does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must

submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 9, 1998.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§§ 721.723, 721.1525, 721.1737, 721.1740, 721.7360 [Removed]

2. By removing §§ 721.723, 721.1525, 721.1737, 721.1740, and 721.7360.

[FR Doc. 98–31390 Filed 11–23–98; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

46 CFR Parts 510, 514, and 582

Anti-Rebate Certification Filing Requirements

AGENCY: Federal Maritime Commission.

ACTION: Waiver of filing requirement.

SUMMARY: The Commission is waiving the requirement for chief executive officers of common carriers and other entities to file by December 31, 1998, a written certification that the firm has a policy against rebating that was recently promulgated to each owner, officer and employee of the firm, with details of the firm's efforts to prevent illegal rebating and that the firm will cooperate with Commission efforts to end illegal rebating. This action is being taken to alleviate the filing burden on the public and the collection burden on the Commission, in light of changes made by the Ocean Shipping Reform Act of 1998 (''OSRA'') which removes the filing requirement on May 1, 1999, when OSRA becomes effective.

EFFECTIVE DATE: November 24, 1998.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573–0001, (202) 523–5796, E-mail: bryant@fmc.gov.

SUPPLEMENTARY INFORMATION: Section 15(b) of the Shipping Act of 1984, 46 U.S.C. 1714(b) (''1984 Act'') requires the chief executive officer of each common carrier and other entities designated by the Federal Maritime Commission to file with the Commission a periodic written certification made under oath. The chief executive officer must certify: that the firm has a policy prohibiting rebating; that the policy was recently promulgated to each owner, officer and employee of the firm; that it has provided details of the efforts made by the firm to prevent illegal rebating; and that the firm will cooperate with the Commission in its efforts to end these illegal practices.

The section 15(b) requirement is implemented by the Commission's regulations at 46 CFR Part 582, 46 CFR 514.1(c)(1)(iii), 46 CFR 510.16(a)(6), and 46 CFR 510.25, which require the chief executive officer of every common carrier and ocean freight forwarder to file an Anti-Rebate Certification (''ARC'') as prescribed by the form in Appendix A of Part 582. ARCs are required when a carrier files its initial tariff and when a freight forwarder applicant submits its initial application for a freight forwarder license. Thereafter, ARCs are required to be filed by December 31 of each even-numbered calendar year. Failure to file an ARC may result in the cancellation of a carrier's tariffs, the striking of a carrier's name as a participant to any conference rate tariffs in which it participates or suspension of a freight forwarder's license and possibly the assessment of civil penalties.

The 1984 Act, as amended by the Ocean Shipping Reform Act of 1998 (''OSRA''), removes the ARC requirements from section 15 effective May 1, 1999, four months after they are due from the approximately 5000 subject firms on December 31, 1998. The ARC program consumes a large amount of the Commission's resources. In addition, it generally takes several months to process receipts, follow-up on deficient filings and to complete the tariff cancellation/freight forwarder license suspension process. In short, it is unlikely that the 1999/2000 program could be completed by May 1, 1999. Moreover, continuation of this requirement would place a great strain on agency resources at a time when they will be needed to work on program changes required by OSRA. The Commission, therefore, has determined to waive this requirement for the ARC filing due December 31, 1998.

This waiver is strictly for administrative convenience. The Commission makes clear that the 1984 Act, both currently and as will be amended by OSRA, prohibits the payment, receipt or solicitation of illegal rebates. This waiver of certification requirements does not modify, in any manner, the Commission's enforcement obligations or efforts with respect to past or future rebate activity.

Now therefore, it is ordered that pursuant to 5 U.S.C. 553 and sections 15 and 17 of the Shipping Act of 1984 (46 U.S.C. app 1714 and 1716), the requirements of 46 CFR Part 582, 46 CFR 514.1(c)(1)(iii), 46 CFR 510.16(a)(6), and 46 CFR 510.25 for the filing due December 31, 1998, are waived effective November 24, 1998.

Pursuant to 5 U.S.C. 553(b) and (d) we find that prior public notice, opportunity for comment, and delayed effective date are neither necessary nor practical inasmuch as this waiver merely relieves restrictions otherwise applicable.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–31341 Filed 11–23–98; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–66, RM–8729, RM–8821]

Radio Broadcasting Services; Sibley, IA, and Brandon, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 261A to Brandon, South Dakota. *See* 61 FR 15442, April 8, 1996; The reference coordinates for Channel 261A at Brandon, South Dakota, are 43–36–02 and 96–31–15. With this action, the proceeding is terminated.

EFFECTIVE DATE: December 23, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* in MM Docket No. 96–66,

adopted October 28, 1998, and released November 6, 1998. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3805, 1231 M Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under South Dakota, is amended by adding Brandon, Channel 261A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–31276 Filed 11–23–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–233; RM–9162]

Radio Broadcasting Services; East Brewton, AL and Navarre, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to the *Notice of Proposed Rule Making* in this proceeding, 62 FR 63690 (December 2, 1997), this document denies the request of 550–AM, the permittee of Station WGCX(FM), Channel 239A at East Brewton, Alabama, to substitute Channel 239C3 for Channel 239A at East Brewton, and reallot Channel 239C3 to Navarre, Florida. The present allotment to East Brewton is viewed as being superior to the reallotment proposal for Navarre. The population of East Brewton is larger than that of Navarre. The East Brewton allotment would provide a fifth reception service to over 7,000 persons, whereas Navarre is already adequately served with seven reception services. This document terminates the proceeding.

EFFECTIVE DATE: November 24, 1998.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–233 adopted October 28, 1998, and released November 6, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–31275 Filed 11–23–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–126; RM–9293]

Radio Broadcasting Services; Bunker, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 292A to Bunker, Missouri, in response to a petition filed by Bunker Radio Project. *See* 63 FR 39804, July 24, 1998. The coordinates for Channel 292A at Bunker are 37–27–18 and 91–12–48. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 28, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 98–126, adopted November 9, 1998, and released November 13, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by adding Bunker, Channel 292A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–31343 Filed 11–23–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–129; RM–9307]

Radio Broadcasting Services; Powers, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document dismisses a proposal to allot Channel 262A at Powers, Michigan. A Notice of Proposed Rule Making was issued in response to a petition filed by Results Broadcasting of Iron Mountain, Inc. *See* 63 FR 39804, July 24, 1998. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 24, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 98–129, adopted November 9, 1998, and released November 13, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy

contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–31342 Filed 11–23–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 970703166–8209–04; I.D. 060997A3]

RIN 0648–AH65

Fisheries of the Exclusive Economic Zone Off Alaska; License Limitation Program; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final rule pertaining to the license limitation program published in the **Federal Register** on October 1, 1998.

DATES: This action becomes effective November 24, 1998.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

A final rule was published in the **Federal Register** on October 1, 1998 (63 FR 52642), implementing part of Amendment 39 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management Area (BSAI), Amendment 41 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA), and Amendment 5 to the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the BSAI.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and need to be clarified. NMFS is correcting these errors and is making no substantive change to the document in this action.

Dated: November 18, 1998.

Richard H. Schaefer,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

Accordingly, 50 CFR part 679 is corrected by making the following correcting amendments:

1. In the **Federal Register** of October 1, 1998, in FR Doc. 98–26186, on page 52642, in the first column, correct the ''Dates'' caption to read:

DATES: Effective January 1, 2000, except for definitions added to § 679.2 and paragraphs (k)(3), (k)(4), (k)(5), (k)(6), (k)(8)(iii), and (k)(8)(iv) added to § 679.4, which are effective January 1, 1999.

PART 679–FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

2. The authority citiation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

§ 679.2 [Corrected]

3. In § 679.2, in the definition, ''Eligible applicant'', paragraph (1), remove ''§ 679.4(i)(4) and (i)(5)'', and add in its place, ''§ 679.4(k)(4) and (k)(5)''.

4. In § 679.2, in the definition, ''Eligible applicant'', paragraph (2), remove ''§ 649.4(i)(4) and (i)(5)'' and add in its place, ''§ 679.4(k)(4) and (k)(5)''.

5. In § 679.2, in the definition, ''Eligible applicant'', paragraph (3), remove ''§ 679.4(i)(5)(ii)(G)'' each time it appears and add in its place, ''§ 679.4(k)(5)(ii)(G)'' each time it appears.

§ 679.4 [Corrected]

6. In § 679.4, in paragraph (k)(1)(i), in the first sentence, remove ''paragraph (i)(2)'' and add in its place, ''paragraph (k)(2)''.

7. In § 679.4, in paragraph (k)(1)(ii), in the first sentence, remove ''paragraph (i)(2)'' and add in its place, ''paragraph (k)(2)''.

8. In § 679.4, in paragraph (k)(2) introductory text, remove ''paragraph (i)(1)'' and add in its place, ''paragraph (k)(1)''.

9. In § 679.4, in paragraph (k)(3)(ii)(A)(*1*), remove ''paragraph (i)(4)'' and add in its place, ''paragraph (k)(4)'' and remove ''paragraph (i)(4)(ii)'' and add in its place, ''paragraph (k)(4)(ii)''.

10. In § 679.4, in paragraph (k)(3)(ii)(A)(*2*), remove ''paragraph (i)(5)'' and add in its place, ''paragraph (k)(5)'' and remove ''paragraph (i)(5)(ii)'' and add in its place, ''paragraph (k)(5)(ii)''.

11. In § 679.4, in paragraph (k)(3)(ii)(A)(*3*), remove ''paragraphs (i)(3)(ii)(A)(*1*) and (i)(3)(ii)(A)(*2*)'' and add in its place, ''paragraphs (k)(3)(ii)(A)(*1*) and (k)(3)(ii)(A)(*2*)''.

12. In § 679.4, in paragraph (k)(3)(ii)(B), remove ''paragraph (i)(3)(ii)(A)(*1*) or (i)(3)(ii)(A)(*2*)'' and add in its place, ''paragraph (k)(3)(ii)(A)(*1*) or (k)(3)(ii)(A)(*2*)''.

13. In § 679.4, in paragraph (k)(4) introductory text, in the first sentence, remove ''paragraphs (i)(4)(i) and (i)(4)(ii)'' and add in its place, ''paragraphs (k)(4)(i) and (k)(4)(ii)''.

14. In § 679.4, in paragraph (k)(4)(i)(A) introductory text, in the first sentence, remove ''paragraphs (i)(4)(ii)(A) and (i)(4)(ii)(B)'' and add in its place, ''paragraphs (k)(4)(ii)(A) and (k)(4)(ii)(B)''.

15. In § 679.4, in paragraph (k)(4)(i)(B) introductory text, in the first sentence, remove ''paragraphs (i)(4)(ii)(C) through (i)(4)(ii)(E)'' and add in its place, ''paragraphs (k)(4)(ii)(C) through (k)(4)(ii)(E)''.

16. In § 679.4, in paragraph (k)(4)(ii) introductory text, remove ''paragraphs (i)(4)(ii)(A) through (i)(4)(ii)(E)'' and add in its place, ''paragraphs (k)(4)(ii)(A) through (k)(4)(ii)(E)''.

17. In § 679.4, in paragraph (k)(4)(iii), remove ''paragraph (i)(4)(i)(A)(*2*) or (i)(4)(i)(B)(*2*)'' and add in its place, ''paragraph (k)(4)(i)(A)(*2*) or (k)(4)(i)(B)(*2*)''.

18. In § 679.4, in paragraph (k)(4)(iv) introductory text, remove ''paragraph (i)(4)'' and add in its place, ''paragraph (k)(4)'' and remove ''paragraph (i)(4)(i)(A)'' and ''paragraph (i)(4)(ii)(C), (i)(4)(ii)(D), or (i)(4)(ii)(E)'' and add in their place, ''paragraph (k)(4)(i)(A)'' and ''paragraph (k)(4)(ii)(C), (k)(4)(ii)(D), or (k)(4)(ii)(E)'' respectively.

19. In § 679.4, in paragraph (k)(4)(v) introductory text, remove ''paragraph (i)(4)'' and add in its place, ''paragraph (k)(4)'' and remove ''paragraph (i)(4)(i)(B)'' and ''paragraph (i)(4)(ii)(A) or (i)(4)(ii)(B)'' and add in their place, ''paragraph (k)(4)(i)(B)'' and ''(k)(4)(ii)(A) or (k)(4)(ii)(B)'' respectively.

20. In § 679.4, in paragraph (k)(5) introductory text, in the first sentence, remove ''paragraphs (i)(5)(i) and (i)(5)(ii)'', ''paragraph (i)(5)(i)'', and ''paragraph (i)(5)(ii)(A) and (i)(5)(ii)(G)'' and add in their place, ''paragraphs (k)(5)(i) and (k)(5)(ii)'', ''paragraph (k)(5)(i)'', and ''paragraph (k)(5)(ii)(A) and (k)(5)(ii)(G)'' respectively.

21. In § 679.4, in paragraph (k)(5)(i) introductory text, remove ''paragraph (i)(5)(ii)'' and add in its place, ''paragraph (k)(5)(ii)''.

22. In § 679.4, in paragraph (k)(5)(ii) introductory text, remove ''paragraphs (i)(5)(ii)(A)'' and add in its place, ''paragraphs (k)(5)(ii)(A)''.

23. In § 679.4, in paragraph (k)(8)(iv) introductory text, remove ''paragraph (i)(4)'' and add in its place, ''paragraph (k)(4)'' and remove ''paragraph (i)(5)'' and add in its place, ''paragraph (k)(5)''.

§ 679.7 [Corrected]

24. In § 679.7, in paragraph (i)(1)(i), remove ''paragraph (j)(1)(iii)'' and add in its place, ''paragraph (i)(1)(iii)''.

25. In § 679.7, in paragraph (i)(1)(ii), remove ''paragraph (j)(1)(iii)'' and add in its place, ''paragraph (i)(1)(iii)''.

26. In § 679.7, in paragraph (i)(1)(iii), remove ''paragraphs (j)(1)(i) and (j)(1)(ii)'' and add in its place, ''paragraphs (i)(1)(i) and (i)(1)(ii)'', and in the second sentence, remove ''paragraphs (j)(1)(i) and (j)(1)(ii)'' and add in its place each time it appears, ''paragraphs (i)(1)(i) and (i)(1)(ii)'' each time it appears.

27. In § 679.7, in paragraph (i)(2), remove ''§ 679.4(i)(2)'' and add in its place, ''§ 679.4(k)(2)''.

§ 679.43 [Corrected]

28. In § 679.43, in paragraph (p), in the first sentence, remove ''§ 679.4(i)'' and add in its place, ''§ 679.4(k)''.

[FR Doc. 98–31409 Filed 11–19–98; 4:18 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 226
Tuesday, November 24, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 530, 531, 536, 550, 551, 575, 591, and 610

RIN 3206–AH11

Miscellaneous Changes in Compensation Regulations

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing proposed regulations to correct or clarify various regulatory provisions dealing with the compensation of Federal employees. Many of the proposed changes were prompted by questions and comments from users of the regulations. The proposed regulations are intended to assist agencies in administering compensation programs and to provide clearer information to employees covered by those programs.

DATES: Comments must be received on or before January 25, 1999.

ADDRESSES: Comments may be sent or delivered to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415 (FAX: (202) 606–0824 or e-mail: payleave@opm.gov).

FOR FURTHER INFORMATION CONTACT: Bryce Baker, (202) 606–2858, FAX: (202) 606–0824, or e-mail: payleave @ opm.gov.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) proposes to revise a number of miscellaneous pay administration regulations to correct various typographical or technical errors or omissions and to codify or clarify OPM policies. The proposed changes were identified through a general review of compensation regulations by OPM staff—a review that took into account many questions and comments from users of the regulations. The following table lists the specific regulatory sections that are being proposed for revision and briefly describes the purpose and/or effect of each change.

Proposed rule	Description of proposed change
§ 530.202	*Aggregate Limitation on Pay: Definitions.* Amends the definition of ''discretionary payment'' to make clear that retention allowances are the only fixed-rate payments made on a continuing basis that are considered to be discretionary after they have been initially authorized. (Also, see 58 FR 50248, Supplementary Information accompanying the final rule on the aggregate pay limitation, dated September 27, 1993.) Amends the definition of ''estimated aggregate compensation'' to make clear that this term includes the value of all nondiscretionary payments to which the employee is currently entitled as well as projected to be entitled during the course of the calendar year. For example, the amount of the entitlement may be expected to change based on known facts (such as the scheduled date of reassignment to a new locality pay area). The projection would include nondiscretionary payments for which authorization will lapse during the calendar year, but which are expected to be reauthorized (e.g., physicians comparability allowance payments under part 595).
§ 530.203(c)	Corrects a typographical error.
§ 530.203(f)	*Aggregate Limitation on Pay: Erroneous Excess.* Adds new language to clarify how to correct cases where the aggregate compensation actually received by an employee exceeds the Executive Level I limitation because of an earlier error in computing the employee's estimated aggregate compensation (i.e., the error is discovered too late in the year to prevent the erroneous excess). The correction requires that any erroneous excess be deemed to have been paid on the first day of the next calendar year and counted toward the next year's aggregate compensation in applying the Level I limitation.
§ 530.303(d)	*Special Salary Rates.* Provides that certifications made in conjunction with requests to establish or adjust special salary rate schedules may be made by an agency official other than the head of the agency in all cases (not just those involving fewer than 1,000 employees or costs of less than $4 million), as long as that official is officially designated to act in the agency head's behalf in making such a certification and is the sole designee for the agency with respect to any given schedule. Also, eliminates the requirement that the certification address the availability of funds to cover the increased costs associated with the special salary rate request. The funding availability requirement is unnecessary, since an agency would not be making the request for new or higher special salary rates unless it had the necessary funds or was prepared to make adjustments in its budget. Since these requests are made under the authorization of the agency head and transmitted by an agency's headquarters, the agency is in a position to ensure that the budget implications of any request are fully considered.
§ 530.303(i)	*Official Duty Station.* Revises a paragraph defining ''official duty station'' for use in connection with special salary rates, consistent with the proposed revision in § 531.602. (Note: Paragraph (i) was originally added to § 530.303 in an interim rule on official duty station determinations published on May 9, 1997 (62 FR 25423).)
§ 531.203(c)(1)	*Maximum Payable Rate.* Clarifies that the highest rate that can be derived in applying the maximum payable rate rule is the maximum rate (step 10) of the employee's grade.
§ 531.203(d)(2)	*Highest Previous Rate.* Provides that law enforcement officer special rates under section 403 of the Federal Employees Pay Comparability Act of 1990 are to be used in determining an employee's highest previous rate because these rates are basic pay for all purposes. Also corrects reference to special rate authorities in 5 U.S.C. 5305 and in part 532.
§ 531.203(d)(3)	Corrects reference to special rate authorities in 5 U.S.C. 5305 and in part 532.
§ 531.203(f)	*Pay Adjustments.* Modifies the simultaneous action rule to clarify the longstanding policy that general pay adjustments must be processed before individual pay actions that take effect at the same time.
§ 531.204(a)(2)	Corrects reference to special rate authority in 5 U.S.C. 5305.

Proposed rule	Description of proposed change
§ 531.301	*Official Duty Station.* Revises the definition of ''official duty station'' used in connection with law enforcement officer geographic adjustments, consistent with the proposed revision in § 531.602.
§ 531.304(b)	*SES Pay Elections.* Clarifies that a career Senior Executive Service (SES) member also retains a law enforcement geographic adjustment when electing to retain SES basic pay during certain Presidential appointments, consistent with 5 U.S.C. 3392(c)(1) and § 317.801.
§ 531.407(d)	*Within-Grade Increases.* Clarifies that the statutory authority to pay merit increases has been repealed. (The regulatory reference to merit increases is maintained because a past merit increase is considered in making equivalent increase determinations.)
§ 531.602	*Locality Pay.* Revises the definition of ''employee'' to remove an obsolete reference to the separate pay authority for employees under the former Stay-in-School Program. Also, revises the definition of ''official duty station'' so that an employee's duty station is considered unchanged for locality pay purposes when the duty station change is a ''paper move'' connected to a mass transfer of jobs to another location to facilitate a reduction in force that results in the employee's separation within 3 workdays after the transfer. Any severance pay or lump-sum payment for annual leave owed to such an employee would be based on rates of pay applicable in the area to which assigned *before* the transfer, thus avoiding either an unfair reduction in benefits or an unwarranted windfall.
§ 531.606(b)	*SES Pay Elections.* Clarifies that a career SES member also retains locality pay when electing to retain SES basic pay during certain Presidential appointments, consistent with 5 U.S.C. 3392(c)(1) and § 317.801.
§ 536.102	*Grade and Pay Retention.* Amends the definition of ''demotion at an employee's request'' to clarify that the term includes a voluntary demotion that is caused or influenced by a management action related to possible demotion for personal cause. Also, corrects typographical error in definition of ''rate of basic pay.''
§ 536.203(b)	Corrects a typographical error.
§ 536.205(a)(2)	Corrects an erroneous reference.
§ 536.205(b)(4)	*Pay Retention.* Adds a new rule to ensure that, upon change (with no break in service) to a position where a higher rate schedule applies, a retained rate employee's pay would be set no lower than the rate for step 10 on the newly applicable schedule.
§ 550.101(a)(2)	*Premium Pay.* Deletes an obsolete reference to the District of Columbia (DC) government. (DC government employees were excluded from coverage under various title 5 provisions by DC Law 2–139, as amended by DC Law 3–109, as authorized by the DC Self Government and Governmental Reorganization Act, Public Law 93–198, December 24, 1973.)
§ 550.101(d)	*Premium Pay.* Revises an exclusion of certain Customs employees consistent with the Customs Officer Pay Reform Act of 1993 (Public Law 103–66, August 10, 1993) and implementing regulations issued in 1994 by the Department of the Treasury (58 FR 68520 and 19 CFR 24.16). The exclusion now applies only to ''customs officers''—i.e., customs inspectors and canine enforcement officers. Clarifies that the paragraph (d) exclusion also applies to any Sunday pay under the listed authorities. Removes unnecessary references in paragraphs (d) (3) and (7).
§ 550.102	*Premium Pay.* Deletes an obsolete reference to the DC government. (See above description for § 550.101(a)(2).)
§ 550.103	*Premium Pay.* Revises definition of ''administrative workweek'' to clarify that it may consist of any 7 consecutive 24-hour periods. (See parallel change in § 610.102.) Revises the definition of ''agency'' to delete an obsolete reference to the DC government and to delete erroneous reference to a nonexistent paragraph. Adds a new definition of ''day'' for purposes of overtime pay calculations, consistent with current policy. Provides or corrects relevant legal references in the definition of ''law enforcement officer.'' Delegates to agency heads the authority to determine that certain employees under retirement systems other than the Civil Service Retirement System or the Federal Employees Retirement System are law enforcement officers for pay purposes, consistent with the existing delegation of authority to determine retirement coverage. Revises the definition of ''premium pay'' to clarify that it includes compensatory time off and that the dollar value of earned compensatory time off is the overtime pay the employee would have received if the employee had been paid overtime pay instead. This reflects the longstanding policy of the Comptroller General. (See 37 Comp. Gen. 362 (1957).) The same dollar value is used when accumulated and unused compensatory time off is paid off when an employee transfers, separates, or otherwise is entitled to cash payment for compensatory time off. The same dollar value is also used to determine when an employee has reached the biweekly and annual limitations on premium pay under 5 CFR 550.105 and 550.107.
§ 550.107	Corrects language by changing ''period'' to ''pay period.''
§ 550.111(g)	*Overtime Pay.* Adds a cross reference concerning the general prohibition on payment of overtime pay to an employee engaged in training, as provided in § 410.402.
§ 550.112 (k)	*Overtime Work: Standby Duty.* Adds a paragraph to clarify that an employee is in a standby status with creditable hours of work if, for work-related reasons, the employee (1) is restricted to an agency's premises, or so close to it that the employee's time may not be used effectively for his or her own purposes or (2) is restricted to another location, may not pursue non-work activities, and is required to remain in a state of readiness to perform work. This is consistent with longstanding OPM policy, OPM's regulations on standby duty premium pay, and OPM's regulations on overtime pay under the Fair Labor Standards Act of 1938, as amended (FLSA). (See §§ 550.143(b) and 551.431(a).) (Note: An employee who is compensated for standby duty by payment of standby duty premium pay may not also be compensated by payment of overtime pay on an hour-for-hour basis for the same hours of work.)
§ 550.112(l)	*Overtime Work: On-Call Status.* Adds a new paragraph to clarify that time in an on-call status does not constitute hours of work under title 5 overtime provisions. This is consistent with OPM's longstanding policy and parallels OPM's regulations on FLSA overtime pay. (See § 551.431(b).) On-call status includes periods when an employee is required to be reachable by telephone or electronic device and ready to report for duty upon request, but is free to pursue personal activities within a reasonable call-back radius. (Note: An agency may determine that certain hours during which a criminal investigator is placed in a duty agent or on-call status may be credited as availability hours under § 550.182(c), subject to the policies and procedures established by the agency.)

Proposed rule	Description of proposed change
§ 550.112(m)	*Overtime Work: Meal and Sleep Time.* Adds a new paragraph to clarify that bona fide meal periods and sleep time are generally not hours of work under title 5 premium pay provisions, consistent with longstanding OPM policy. However, consistent with 5 CFR 610.111(c), meal and sleep periods during regularly scheduled tours of duty for which an employee receives annual premium pay for regularly scheduled standby duty are included in hours of work. Also, this new paragraph incorporates the ''two-thirds rule'' for FLSA-exempt employees, as established by Comptroller General opinions, into OPM regulations for the first time. For employees who have substantial time in a standby status as part of tours of duty of 24 hours or more, for which they do not receive annual premium pay for regularly scheduled standby duty, the two-thirds rule permits agencies to exclude up to 8 hours for bona fide meal and sleep periods from hours of work. (See similar rule in OPM's regulations on FLSA overtime pay in § 551.432.)
§ 550.121(c)	*Night Pay.* Adds a cross reference concerning the general prohibition on payment of night pay to an employee engaged in training, as provided in § 410.402.
§ 550.131(d)	*Holiday Premium Pay.* Adds a cross reference concerning the general prohibition on payment of holiday premium pay to an employee engaged in training, as provided in § 410.402.
§ 550.153(d)	Corrects an erroneous reference.
§ 550.162(f)	*Annual Premium Pay.* Adds a paragraph that provides that an agency's existing approval of annual premium pay for administratively uncontrollable overtime (AUO) work or regularly scheduled standby duty may not be discontinued during a period after a job-related injury while an employee is not working and is in receipt of benefits under the Federal Employees' Compensation Act (FECA), 5 U.S.C. chapter 81, or in a paid leave status in lieu of receiving FECA benefits, unless such premium pay is discontinued for all similar positions. This generally prevents the loss of AUO or standby duty pay after a job-related injury. (Note: Section 550.162(e) provides for the continuation of AUO or standby duty pay during paid leave generally, but only if the premium pay remains payable. Thus, various Comptroller General opinions have provided that an agency may discontinue AUO pay for an employee on extended sick leave if there is no reasonable expectation that the employee will return to duty. For example, see Comptroller General opinion B–152061, May 4, 1982. The proposed paragraph would provide a limiting exception barring an agency from so discontinuing AUO or standby duty pay in workers' compensation cases.) The proposed paragraph would also ensure that, if the employee is eligible for retirement, his or her high-3 average salary is not adversely affected. (In determining an employee's high-3 average salary, the position's established rate of ''basic pay''—including AUO pay for law enforcement officers and standby duty pay—is used during periods of leave without pay. Thus, even though AUO pay and standby pay are not actually payable during leave without pay, the established AUO/standby duty rates may be used in calculating the high-3 average salary.)
§ 550.171(b)	*Sunday Premium Pay.* Adds a cross reference concerning the general prohibition on payment of Sunday premium pay to an employee engaged in training, as provided in § 410.402.
§ 550.202	*Advances in Pay.* Revises the definition of ''newly appointed'' by replacing an obsolete reference to the former cooperative work-study program with a reference to the Student Educational Employment Program and by making other changes to improve the clarity of the definition.
§ 550.205(b)	Corrects a typographical error.
§ 550.311(b)	Corrects an erroneous reference.
§ 550.312	*Allotments.* Clarifies that an employee's written signature is not required to effect an allotment from pay. Automated computer programs that allow employees to process allotments themselves using a personal identification code are permitted. Also simplifies existing language on general limitations.
§ 550.341 § 550.342	*Allotments.* Deletes redundant provisions that are more fully covered in OPM's regulations for the Combined Federal Campaign program in part 950. Provides appropriate cross reference.
§ 550.703	*Severance Pay: Definitions.* Revises the definition of ''commuting area,'' which is used in determining whether an employee is involuntarily separated or has been given a reasonable offer. A proposed new work site is in the employee's commuting area if (1) the employee's residence is in the standard commuting area surrounding that work site or (2) the employee's residence is outside the standard commuting area but within the employee's established commuting range based on his or her existing commuting trip so that the employee would not be compelled to move due to the change to the new work site. The compelled-to-move criterion represents longstanding policy as reflected in Comptroller General opinions (e.g., see B–182300, January 16, 1975, and B–210524, June 6, 1983) and in parallel determinations made for purposes of establishing an employee's entitlement to discontinued service retirement (e.g., see 5 U.S.C. 8336(d) and section 44A2.1–3 of the CSRS and FERS Handbook for Personnel and Payroll Offices). Revises the definition of ''employee'' to make clear that this definition (tied to 5 U.S.C. 5595(a)(2)) is used only in establishing an individual's initial eligibility for severance pay upon separation. (Note: A broader definition of ''employee'' (as defined in 5 U.S.C. 2105) is used in determining creditable service (§ 550.708).) Also clarifies the definition of the term ''individual employed'' in 5 U.S.C. 5595(a)(2)(A). Defines the term ''employed by the Government of the United States'' consistent with longstanding policy. The Government of the United States encompasses all Federal entities employing civilian personnel, including the legislative branch, the judicial branch, the Postal Service, etc. The term is not limited to employment as an ''employee'' as defined in 5 U.S.C. 2105.
§ 550.703	*Severance Pay: Definitions.* (continued) Revises the definition of ''immediate annuity'' to clarify current policy that, for purposes of determining eligibility for severance pay, Social Security benefits have no effect, but an immediate annuity from a non-Federal retirement system providing benefits for Federal civilian service is disqualifying. (See 54 Comp. Gen. 905 (1975).) Also clarifies that voluntary postponement of annuity commencing dates under any retirement system does not serve to exclude an otherwise covered annuity from being considered an immediate annuity. The key is whether the employee is eligible for (''fulfilled the requirements for'') an immediate annuity. Revises the definition of ''involuntary separation'' to make clear that there may be a personal element to defining an individual employee's commuting area. As provided in the revised definition of the term ''commuting area'' (described above), an employee's residence may be outside the standard commuting area for the new work site, but the new work site may still be within the employee's commuting area.

Proposed rule	Description of proposed change
	Revises the definition of ''nonqualifying appointment'' to clarify that this term includes appointments that do not convey coverage under the severance pay provision—e.g., an appointment at a Federal agency not included under the definition of ''agency'' in 5 U.S.C. 5595(a)(1). Thus, a time-limited appointment at a noncovered agency is a ''nonqualifying time-limited appointment'' resulting in suspension of severance pay under § 550.710, regardless of the length of the employee's break in service. The definition is also revised to clarify that Veterans Readjustment Appointments (5 CFR part 307) and Presidential Management Intern appointments (5 CFR part 362) are nonqualifying time-limited appointments.
	Corrects an erroneous reference in the definition of ''qualifying appointment'' that inadvertently resulted from removal of an obsolete paragraph as part of regulatory changes made in 1993 (58 FR 58257). Clarifies that a qualifying time-limited appointment must be for full-time employment (as required by 5 U.S.C. 5595(a)(2)(ii)) and must be otherwise qualifying. Also clarifies that a series of time-limited appointments at an agency following an initial qualifying time-limited appointment is treated as one qualifying time-limited appointment in applying the severance pay provisions, as long as there is no break in service between the time-limited appointments.
	Modifies the definition of ''reasonable offer'' so that an offered position would not be considered unreasonable simply because the position carries greater tenure. (The current regulation requires that the offered position's tenure be exactly the same. The proposed change parallels the tenure rule in the definition of ''reasonable offer'' in § 536.206(3) for grade and pay.)
§ 550.706	*Severance Pay: Resignations.* Clarifies what constitutes a specific or general written notice that allows a resignation to be treated as an involuntary separation for severance pay purposes. The specific notice must state the effective date of the involuntary separation. The general notice must state the latest date (not more than 1 year after the notice) by which affected employees will be separated, based on current agency plans. In addition, the general notice must be issued by an official with proper authority to issue such a notice and must state that a subsequent resignation will be considered an involuntary separation for severance pay purposes. (A general notice has no standing under the reduction-in-force regulations in 5 CFR part 351, subpart H, and may not be used to effect an employee's separation.) The effect of canceling a notice—specific or general—is addressed separately in a new paragraph.
§ 550.707(b)	*Severance Pay: Computation.* Clarifies how to determine the weekly rate of basic pay used in computing the severance pay fund for employees in positions with regularly varying work schedules or rates of basic pay. In these cases, to ensure equitable treatment, it is necessary to compute an appropriate weekly average for the last position held during the 26 biweekly pay periods immediately preceding separation. The revised language also clarifies that the averaging method applies to employees with pure part-time schedules and seasonal schedules.
§ 550.707(d)	*Severance Pay: Fund.* Adds a provision clarifying that the severance pay fund is capped so that there may not be more than 52 weeks of severance pay over an individual's lifetime, consistent with 5 U.S.C. 5595(c).
§ 550.708(a)	*Severance Pay: Creditable Service.* Clarifies that any service as an employee under 5 U.S.C. 2105 is creditable for purposes of computing service used in the computation of the severance pay fund, excluding only time in nonpay status (e.g., leave without pay) that is not creditable for leave or retirement purposes. This would codify current OPM policy.
§ 550.708(e)	*Severance Pay: Creditability of DC Government Service.* Adds a new paragraph to clarify that employment with the government of the District of Columbia (DC) is creditable service if the individual was first employed by the DC government before October 1, 1987. (See former Federal Personnel Manual letter 630–32, September 7, 1989. Credit for this DC government service was formerly provided via a linkage to the service credit rules for annual leave accrual purposes. Under Public Law 99–335, June 6, 1986, only DC government employees first employed before October 1, 1987, are considered to be employees for purposes of administering the leave system, excluding teachers or librarians of the DC public schools. See 5 U.S.C. 6301(2)(B) and (i).)
§ 550.709	*Severance Pay: Accrual and Payment.* Clarifies that severance pay accrues on a day-to-day basis as a recipient remains unemployed by the Federal Government. Thus, an individual's first and/or last severance payment may be a partial payment when the employee was not eligible for severance pay for the entire pay period. Also, clarifies when an average rate of basic pay is used in determining the amount of the severance payment. Adds a reference to the special payment provisions under 5 U.S.C. 5595(h) for certain individuals employed by the Department of Defense (DOD) or Coast Guard nonappropriated fund instrumentalities. Adds reference to law providing that DOD employees may be paid severance pay in one lump-sum payment. (See section 1035 of Public Law 104–106, February 10, 1996.)
§ 550.710	*Severance Pay: Suspension.* Clarifies a provision dealing with suspension of severance pay during a nonqualifying time-limited appointment. (Under 5 U.S.C. 5595(d), employment by the government of the District of Columbia triggers discontinuation of severance pay. This provision was not affected by laws excluding DC government employees from entitlement to severance pay under 5 U.S.C. 5595, since those laws do not apply to the entitlements of Federal employees based on Federal service.)
§ 550.711	*Severance Pay: Termination.* Clarifies a provision dealing with termination of severance pay upon reemployment. Reemployment by the Federal Government or DC government terminates severance pay in all instances unless severance pay is suspended under § 550.710. (See note regarding DC government in description for § 550.710.) With addition of proposed § 550.707(d), the reference to termination due to application of 1-year limit is unnecessary. The amount of the severance pay fund reflects the 1-year (52-week) limitation.
§ 550.713	*Severance Pay: Recordkeeping.* Deletes a nonessential recordkeeping requirement related to separated employees hired within 90 days by contractors assuming a Federal function. The recordkeeping requirement was intended as a temporary measure to allow evaluation of a regulatory change. (See 54 FR 23215, May 31, 1989.)
§ 550.803	*Back Pay: Definitions.* Revises the definitions of ''employee'' and ''pay, allowances, and differentials'' to clarify that, under the law, back pay refers to monetary benefits payable during periods of Federal employment, not to post-separation benefits such as retirement benefits and severance payments. Also, clarifies that agency and employee contributions to a retirement investment fund, such as the Thrift Savings Plan, are not covered by the back pay law and regulations. (Note: Correction of agency errors affecting an employee's Thrift Savings Plan account are subject to applicable law and regulations. See 5 U.S.C. 8432a and 5 CFR parts 1605 and 1606.)

Proposed rule	Description of proposed change
§ 550.805(e)	*Back Pay: Deductions.* Clarifies the rules for making offsets and deductions from gross back pay awards. Addresses the withholding of normal pay deductions in a separate paragraph, specifying that such deductions are to be made in accordance with the regular order of precedence established by the agency, subject to applicable law and regulations. (For example, mandatory retirement deductions should be made first, consistent with 5 U.S.C. 8334 (a)–(c) and 8422 (a)–(c).) Clarifies when health and life insurance premiums are to be deducted. Also, adds a paragraph to clarify that agencies may make an administrative offset to recover a debt owed the Government.
§ 550.805(h)	*Back Pay: Thrift Savings Plan.* Provides cross reference to Federal Retirement Thrift Investment Board regulations on correction of agency errors affecting an employee's Thrift Savings Plan account.
§ 550.806(a)	*Back Pay: Interest.* Clarifies that interest accrual ends at the time selected by the agency not more than 30 days before the date of the back pay payment, as provided by 5 U.S.C. 5596(b)(2)(B). Also clarifies that no interest will be payable if an agency makes the back pay payment within 30 days after the erroneous denial, withdrawal, or reduction of a payment and sets the interest accrual ending point to coincide with the interest accrual starting point. (This matter was addressed in the Supplementary Information section accompanying the final regulations on back pay interest issued on November 15, 1988. See 53 FR 45886.)
§ 550.806(h)	*Back Pay: Interest.* Removes paragraph (h), since the reference to the December 1987 effective date of the back pay interest provision is no longer necessary.
Appendix A to subpart H of part 550.	*Back Pay: Deductions.* This new appendix includes information on how to compute certain common deductions in back pay cases. It includes information on making Federal tax deductions, including new Internal Revenue Service (IRS) guidance clarifying that agencies may adjust Federal tax withholdings to reflect the withholding of corresponding taxes from erroneous payments made in the same calendar year. For additional information on Federal tax withholdings and wage repayments, agencies should review Circular E, Employer's Tax Guide (Publication 15) or other appropriate IRS publications, or contact IRS directly.
§ 550.902	*Hazard Pay Differential: Definition of ''Employee.''* Clarifies definition of term ''employee,'' consistent with 5 U.S.C. 5545(d).
§ 550.903(b)	*Hazard Pay Differential: Requests.* Clarifies that requests for new categories and rates for hazard pay differentials must be submitted by the head of an agency (or authorized designee).
§ 550.905	*Hazard Pay Differential: Payment.* Clarifies that the differential may not be paid for hours for which employees receive annual premium pay for regularly scheduled standby duty, annual premium pay for administratively uncontrollable overtime work, or law enforcement availability pay. This reflects requirements in law that provide that annual premium pay and availability pay are paid instead of premium pay provided by other provisions of subchapter V of title 5, United States Code. While each of the applicable provisions of law provide for exceptions (other types of premium pay that may be paid for the same hours of work), in all three cases, hazard pay differential is not one of the exceptions. (See 5 U.S.C. 5545(c)(1), 5 U.S.C. 5545(c)(2), and 5 U.S.C. 5545a(c).)
§ 551.401 (f)–(g) and § 551.501(a).	*FLSA Overtime: Hours of Work.* Corrects regulatory references to reflect recent renumbering of sections in OPM's training regulations. (See interim training regulations published at 61 FR 21947, May 13, 1996.)
§ 551.423(a)	*FLSA Overtime: Training Hours.* Clarifies that training hours compensable under § 410.402(b) are always hours of work for purposes of determining an employee's FLSA overtime pay entitlements, even if those training hours are related to entry-level and similar types of training and do not involve the performance of productive work. For example, if an employee is required to participate in night training as part of a basic training course because the situations he or she must learn to handle occur only at night, those night training hours would be compensable under § 410.402(b)(2) and would be hours of work under § 551.423(a)(3). This result is consistent with §§ 551.401(f) and (g). In addition, a cross reference to § 410.402(d) is added in § 551.423(a)(2).
§ 551.432	*FLSA Overtime: Sleep Hours.* Clarifies that a special rule on excludability of bona fide sleep time from hours of work applies to law enforcement and fire protection employees receiving annual premium pay under 5 U.S.C. 5545(c)(1) or (2). (See similar language with respect to meal periods in 5 CFR 551.411(c).) Makes clear that the 8-hour limit on the amount of sleep and meal time that can be excluded in any 24-hour period applies in all situations—regardless of the length of the tour of duty or the applicability of the special rules for law enforcement and fire protection employees. (This parallels the ''two-thirds rule'' that applies to exempt employees under title 5. See proposed rule in § 550.112(m)(3). Compare also to FLSA regulations in 29 CFR 553.222–223 and 785.19–23.) Also, revises regulations to clearly provide that on-duty sleep hours during regularly scheduled tours that are compensated by standby duty premium pay must be considered hours of work for FLSA purposes. (On-duty sleep hours may be excluded from FLSA hours of work under certain conditions. However, such an exclusion is not appropriate for hours for which the employee receives standby duty premium pay. Since standby duty premium pay is used in the FLSA overtime pay computation, the corresponding hours associated with that premium pay must be fully reflected in the computation.)
§ 551.501(a)(5)	*FLSA Overtime: Law Enforcement Officers.* Clarifies that OPM never intended to restrict the application of the special overtime standards established under section 7(k) of the Fair Labor Standards Act of 1938 (FLSA), as amended, in the case of Federal employees who are covered by the FLSA but not by the overtime pay provisions of title 5, United States Code. This clarification is necessary because 5 CFR 551.501(a)(5) can be interpreted to authorize an increase in overtime pay for employees of the United States Secret Service Uniformed Division and members of the United States Park Police. These employees are not covered by the overtime pay provisions of title 5, United States Code, but are covered by overtime pay provisions in title 4, United States Code, as well as by the overtime pay provisions of the FLSA. OPM regulations authorized by section 4(f) of the FLSA and 5 U.S.C. 5542(c) are intended to permit one computation of overtime pay instead of two (under title 5 and the FLSA) for employees who are covered by the overtime pay provisions of title 5 and are not intended to result in any significant change in overtime pay entitlement.
§ 551.512(b)	*FLSA Overtime: Straight Time Rate.* Revises to state expressly that bonuses and awards (including gainsharing) are not included in computing the FLSA straight time rate. This is consistent with the longstanding application of this regulation and with similar Department of Labor regulations. (See 29 CFR 778.110.)

Proposed rule	Description of proposed change
§ 551.512(d)	*FLSA Overtime Pay: Nondiscretionary Awards.* Amends OPM's regulations in part 551 on earning overtime pay under the Fair Labor Standards Act (FLSA) to provide two new options for meeting the FLSA requirement to include *nondiscretionary* individual or group awards (e.g., gainsharing) in overtime pay computations. Currently, this requirement is met using a ''recomputation method'—i.e., a retroactive recomputation of the employee's FLSA overtime pay in past periods that involves retroactively allocating the bonus money and deriving a revised FLSA overtime pay entitlement. Under the two new options—referred to as the ''percentage awards method'' and the ''boosted hour method,'' FLSA overtime requirements may be met by following certain procedures in computing the amount of an employee's nondiscretionary award. These new methods are consistent with the Department of Labor's FLSA regulations and policies.
§ 551.541(b)	Corrects an erroneous reference.
§ 575.102(a)(3)	*Recruitment Bonuses.* Adds positions in the Federal Bureau of Investigation (FBI) and Drug Enforcement Administration (DEA) Senior Executive Service to the list of positions for which agencies have delegated authority to approve recruitment bonuses. Other SES positions are already covered. This corrects an inadvertent omission.
§ 575.103	*Recruitment Bonuses.* Removes obsolete language referencing a minimum 12-month service agreement for recruitment bonus recipients. Section 575.106 was previously revised to require only a 6-month minimum period. (See 60 FR 33326, June 28, 1995.) Also, provides a revised definition of ''commuting area'' by referring to the revised definition used in § 575.203.
§ 575.202(a)(3)	*Relocation Bonuses.* Adds position in the FBI and DEA Senior Executive Service to the list of positions for which agencies have delegated authority to approve relocation bonuses. Other SES positions are already covered. This corrects an inadvertent omission.
§ 575.203	*Relocation Bonuses.* Provides a revised definition of ''commuting area'', consistent with the proposed definition in § 550.703. Also, provides a revised definition of ''employee'' to cover all individuals employed in the civil service (including those in the legislative or judicial branches) who are relocated to a different commuting area upon appointment to a covered position. (The current regulation can be interpreted to limit coverage to individuals who, before relocation, are in a position in an agency covered by the General Schedule system, which is more restrictive than the law.)
§ 575.205(b)(5)	Corrects a typographical error.
§ 575.302(a)(3)	*Retention Allowances.* Adds positions in the FBI and DEA Senior Executive Service to the list of positions for which agencies have delegated authority to approve retention allowances. Other SES positions are already covered. This corrects an inadvertent omission.
§ 575.307(a)	*Retention Allowances.* Simplifies language of provision requiring reduction or termination of authorized retention allowances to the extent necessary to prevent authorization of retention allowances that would cause estimated aggregate compensation to exceed the rate for Executive Level I. Clarifies that reduction or termination of retention allowances may be necessitated by an event other than an increase in a nondiscretionary payment—e.g., discovery of an error in computing estimated aggregate compensation.
§ 591.201	*Official Duty Station.* Revises the definition of ''official duty station'' used in connection with nonforeign area cost-of-living allowances and post differentials, consistent with the proposed revision in § 531.602. (Note: A definition of ''official duty station'' was originally added to § 591.201 in an interim rule on official duty station determinations published on May 9, 1997 (62 FR 25423).)
§ 610.102	*Administrative Workweek.* Clarifies that an administrative workweek established by an agency may consist of any 7 consecutive 24-hour periods. This recognizes that certain Federal employees (e.g., firefighters) work 24-hour shifts that may not be aligned to the calendar day.
§ 610.111	*Workweeks.* Clarifies that agency policies concerning the scheduling of work need not be established by promulgation of a formal regulation published in the FEDERAL REGISTER. However, agency work scheduling policies must be established in writing, such as in an agency policy manual or directive. In addition, all employees must be informed of agency work scheduling policies and be permitted to review the written policy statements upon request.
§ 610.407	*Holiday Premium Pay.* Adds a cross reference concerning the general prohibition on receiving holiday premium pay while engaged in training, as provided in § 410.402.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

List of Subjects

5 CFR Parts 530, 531, 536, 550, 551, 575, 591, and 610

Administrative practice and procedure, Claims, Freedom of information, Government employees, Holidays, Law enforcement officers, Reporting and Recordkeeping requirements, Travel and transportation expenses, Wages.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is proposing to amend parts 530, 531, 536, 550, 551, 575, 591, and 610 of title 5 of the Code of Federal Regulations as follows:

PART 530—PAY RATES AND SYSTEMS (GENERAL)

1. The authority citation for part 530 continues to read as follows:

Authority: 5 U.S.C. 5305 and 5307; E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316;

Subpart B also issued under secs. 302(c) and 404(c) of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), 104 Stat. 1462 and 1466, respectively;

Subpart C also issued under sec. 4 of the Performance Management and Recognition System Termination Act of 1993 (Pub. L. 103–89), 107 Stat. 981.

Subpart B—Aggregate Limitation on Pay

2. In § 530.202, the definition of *estimated aggregate compensation* is amended by removing the words ''is entitled'' and adding in their place the words ''is or is expected to be entitled'', and the definition of *discretionary payment* is revised to read as follows:

§ 530.202 Definitions.

* * * * *

Discretionary payment means a payment that an agency has discretion to pay or not to pay to an employee, including a retention allowance but

excluding any other payment that is preauthorized to be paid to an employee at a regular fixed rate each pay period.

* * * * *

3. In § 530.203, paragraph (c) is amended by removing the word ''proved'' and adding in its place the word ''provided'', and a new paragraph (f) is added at the end of the section to read as follows:

§ 530.203 Administration of aggregate limitation on pay.

* * * * *

(f) If an agency makes an incorrect estimate of aggregate compensation at an earlier date in the calendar year, the sum of an employee's remaining payments of basic pay (which may not be deferred) may exceed the difference between the aggregate compensation the employee has actually received to date in that calendar year and the rate for level I of the Executive Schedule. In this case, the employee will become indebted to the Federal Government for any amount that is paid in excess of the level I aggregate limitation. To the extent that the erroneous excess is attributable to amounts that should have been deferred and would have been payable at the beginning of the next calendar year, the debt will be extinguished on January 1 of the next calendar year. As part of the correction of the error, the amount of the erroneous excess must be deemed to have been paid on January 1 of the next calendar year (when the debt was extinguished) as if it were a deferred excess payment as described in § 530.204 and must be considered part of the employee's aggregate compensation for the new calendar year.

Subpart C—Special Salary Rate Schedules for Recruitment and Retention

4. In § 530.303, paragraphs (d) and (i) are revised to read as follows:

§ 530.303 Establishing and adjusting special salary rate schedules.

* * * * *

(d) All requests to establish or adjust special salary rate schedules must be transmitted directly to OPM's central office by the agency's headquarters. Each request must include a certification by the head of the agency (or other official designated to act on behalf of the head of the agency with respect to the given schedule) that the requested special salary rates are considered necessary to ensure staffing adequate to the accomplishment of the agency's mission.

* * * * *

(i) The determination regarding whether an employee is covered by a special salary rate schedule is based on the employee's position of record and the official duty station for that position. For purposes of this subpart, the employee's position of record and corresponding official duty station are the position and station documented on the employee's most recent notification of personnel action, excluding a notification associated with a new assignment that is followed immediately (i.e., within 3 workdays) by a reduction in force resulting in the employee's separation before he or she is required to report for duty at the new location. For an employee who is authorized to receive relocation allowances under 5 U.S.C. 5737 in connection with an extended assignment, the position and duty station associated with that assignment are the employee's position of record and official duty station.

PART 531—PAY UNDER THE GENERAL SCHEDULE

5. The authority citation for part 531 continues to read as follows:

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Pub. L. 103–89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316;

Subpart B also issued under 5 U.S.C. 5303(g), 5333, 5334(a), and 7701(b)(2);

Subpart C also issued under 5 U.S.C. 5304, 5305, and 5553; sections 302 and 404 of FEPCA, Pub. L. 101–509, 104 Stat. 1462 and 1466; and section 3(7) of Pub. L. 102–378, 106 Stat. 1356;

Subpart D also issued under 5 U.S.C. 5335(g) and 7701(b)(2);

Subpart E also issued under 5 U.S.C. 5336;

Subpart F also issued under 5 U.S.C. 5304, 5305(g)(1), and 5553; and E.O. 12883, 58 FR 63281, 3 CFR, 1993 Comp., p. 682;

Subpart G also issued under 5 U.S.C. 5304, 5305, and 5553; section 302 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), Pub. L. 101–509, 104 Stat. 1462; and E.O. 12786, 56 FR 67453, 3 CFR, 1991 Comp., p. 376.

Subpart B—Determining Rate of Basic Pay

6. In § 531.203, paragraph (d)(3) is amended by removing ''5303'' and adding in its place ''5305'' and removing ''§ 532.231'' and adding in its place ''part 532''; paragraph (c)(1)(ii) is amended by adding a new sentence at the end of the paragraph; the introductory text of paragraph (d)(2)(vii) is revised; and paragraph (f) is revised to read as follows:

§ 531.203 General provisions.

* * * * *

(c) * * *

(1) * * *

(ii) * * * If the employee's highest previous rate was greater than the maximum rate for the grade in which pay is being fixed, the maximum rate of basic pay that may be paid to the employee is the maximum rate for that grade.

* * * * *

(d) * * *

(2) * * *

(vii) A special rate established under 5 U.S.C. 5305 and part 530 of this chapter, part 532 of this chapter, or other legal authority (other than section 403 of the Federal Employees Comparability Act (FEPCA) (Pub. L. 101–509, 104 Stat. 1465), unless, in a reassignment to another position in the same agency—

* * * * *

(f) *Simultaneous actions.* (1) General pay adjustments must be processed before any individual pay action that takes effect at the same time. General pay adjustments include annual adjustments under 5 U.S.C. 5303, adjustments in locality rates of pay under subpart F of this part, adjustments in special law enforcement adjusted rates of pay under subpart C of this part, adjustments in special salary rates under 5 U.S.C. 5305 or similar provision of law (including section 403 of FEPCA), increases in retained rates under part 536 of this chapter, and increases in continued rates under subparts C and G of this part.

(2) Pay adjustments (other than general pay adjustments) that take effect at the same time must be processed in the order that gives the employee the maximum benefit. When a position or appointment change and entitlement to a higher rate of pay occur at the same time, the higher rate of pay is deemed to be an employee's existing rate of basic pay.

* * * * *

§ 531.204 [Amended]

7. In § 531.204, paragraph (a)(2) is amended by removing ''5303'' and adding in its place ''5305''.

Subpart C—Special Pay Adjustments for Law Enforcement Officers

8. In § 531.301, the definition of *official duty station* is revised to read as follows:

§ 531.301 Definitions.

* * * * *

Official duty station means the duty station for an employee's position of record as indicated on his or her most recent notification of personnel action, excluding a new duty station for an assignment that is followed immediately

(i.e., within 3 workdays) by a reduction in force resulting in the employee's separation before he or she is required to report for duty at the new location. For an employee who is authorized to receive relocation allowances under 5 U.S.C. 5737 in connection with an extended assignment, the temporary duty station associated with that assignment is the employee's official duty station.

* * * * *

9. In § 531.304, paragraph (b)(4) is amended by removing the word ''and''; paragraph (b)(5) is amended by removing the period at the end of the paragraph and adding a semicolon and the word ''and'' in its place; and a new paragraph (b)(6) is added to read as follows:

§ 531.304 Administration of special law enforcement adjusted rates of pay.

* * * * *

(b) * * *

(6) Basic pay that a career appointee in the Senior Executive Service elects to continue while serving under certain Presidential appointments, as provided by 5 U.S.C. 3392(c)(1) and § 317.801 of this chapter.

* * * * *

Subpart D—Within-Grade Increases

10. In § 531.407, paragraph (d) is revised to read as follows:

§ 531.407 Equivalent increase determinations.

* * * * *

(d) *Merit increases.* For the purpose of applying section 5335 of title 5, United States Code, and this subpart, all or a portion of a merit increase, or a zero merit increase, authorized under former section 5404 of title 5, United States Code (which was repealed as of November 1, 1993, by Public Law 103–89), is an equivalent increase.

Subpart F—Locality-Based Comparability Payments

11. In § 531.602, paragraph (1) of the definition of *employee* and the definition of *official duty station* are revised to read as follows:

§ 531.602 Definitions.

* * * * *

Employee means—

(1) An employee in a position to which subchapter III of chapter 53 of title 5, United States Code, applies and whose official duty station is located in a locality pay area within the continental United States, including a GM employee (as defined in § 531.202); and

* * * * *

Official duty station means the duty station for an employee's position of record as indicated on his or her most recent notification of personnel action, excluding a new duty station for an assignment that is followed immediately (i.e., within 3 workdays) by a reduction in force resulting in the employee's separation before he or she is required to report for duty at the new location. For an employee who is authorized to receive relocation allowances under 5 U.S.C. 5737 in connection with an extended assignment, the temporary duty station associated with that assignment is the employee's official duty station.

* * * * *

12. In § 531.606, paragraph (b)(4) is amended by removing the word ''and''; paragraph (b)(5) is amended by removing the period at the end of the paragraph and adding a semicolon and the word ''and'' in its place; and a new paragraph (b)(6) is added to read as follows:

§ 531.606 Administration of locality rates of pay.

* * * * *

(b) * * *

(6) Basic pay that a career appointee in the Senior Executive Service elects to continue while serving under certain Presidential appointments, as provided by 5 U.S.C. 3392(c)(1) and § 317.801 of this chapter.

* * * * *

PART 536—GRADE AND PAY RETENTION

13. The authority citation for part 536 continues to read as follows:

Authority: 5 U.S.C. 5361–5366; sec. 7202(f) of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508), 104 Stat. 1338–336; sec. 4 of the Performance Management and Recognition System Termination Act of 1993 (Pub. L. 103–89), 107 Stat. 981; § 536.307 also issued under 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92–502.

Subpart A—Definitions; Coverage and Applicability

14. In § 536.102, the definition of *rate of basic pay* is amended by removing the words ''or any kind'' and adding in their place the words ''of any kind'', and the definition of *demotion at an employee's request* is revised to read as follows:

§ 536.102 Definitions.

* * * * *

Demotion at an employee's request means a reduction in grade that is initiated by the employee for his or her benefit, convenience, or personal advantage. A demotion that is caused or influenced by a management action is not considered to be at an employee's request, except that a voluntary demotion in response to a management action related to personal cause is considered to be at the employee's request.

* * * * *

Subpart B—Determination of Retained Grade and Rate of Basic Pay; Loss of, or Termination of Eligibility

§ 536.203 [Amended]

15. In § 536.203, paragraph (b) is amended by removing the misspelled word ''immediatley'' and adding in its place ''immediately''.

16. In § 536.205, paragraph (a)(2) is amended by removing the reference to ''531.204(d)(4)'' and adding in its place ''531.204(e)(4)'', and a new paragraph (b)(4) is added to read as follows:

§ 536.205 Determination of rate of basic pay.

* * * * *

(b) * * *

(4) If an employee moves to another position at the same grade while entitled to pay retention, the employee's rate of basic pay after movement may not be less than the maximum rate of basic pay for the newly applicable rate range.

* * * * *

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart A—Premium Pay

17. The authority citation for subpart A of part 550 continues to read as follows:

Authority: 5 U.S.C. 5304 note, 5305 note, 5541(2)(iv), 5548 and 6101(c); E.O. 12748, 3 CFR, 1991 Comp., p. 316.

18. In § 550.101, paragraph (a)(2) is revised; the introductory text of paragraph (d) is amended by adding ''Sunday,'' after ''night,''; paragraphs (d)(3) and (d)(7) are removed; paragraphs (d)(4) through (d)(6) are redesignated as (d)(3) through (d)(5); paragraphs (d)(8) and (d)(9) are redesignated as (d)(6) and (d)(7); and paragraph (d)(1) is revised to read as follows:

§ 550.101 Coverage and exemptions.

(a) * * *

(2) The sections in this subpart incorporating special provisions for certain types of work (§§ 550.141 through 550.164, inclusive) apply also

to each employee of the judicial branch or the legislative branch who is subject to subchapter V of chapter 55 of title 5, United States Code.

* * * * *

(d) * * *

(1) February 13, 1911, as amended (36 Stat. 899, as amended; 19 U.S.C. 261, 267), involving customs inspectors and canine enforcement officers;

* * * * *

19. Section 550.102 is revised to read as follows:

§ 550.102 Entitlement.

A department (and for the purpose of §§ 550.141 through 550.164, inclusive, a legislative or judicial branch agency) must determine an employee's entitlement to premium pay consistent with subchapter V of chapter 55 of title 5, United States Code.

20. In § 550.103, the definition of *day* is added in alphabetical order, and the definitions of *administrative workweek, agency, law enforcement officer,* and *premium pay* are revised to read as follows:

§ 550.103 Definitions.

* * * * *

Administrative workweek means any period of 7 consecutive 24-hour periods designated in advance by the head of the agency under section 6101 of title 5, United States Code.

Agency means—

(1) A *department* as defined in this section; and

(2) A legislative or judicial branch agency which has positions that are subject to subchapter V of chapter 55 of title 5, United States Code.

* * * * *

Day (for overtime pay purposes) means any 24-hour period designated by an agency within the administrative workweek applicable to the employee. A day need not correspond to the 24-hour period of a calendar day. If the agency has not designated another period of time, a day is a calendar day.

* * * * *

Law enforcement officer means an employee who—

(1) Is a law enforcement officer within the meaning of 5 U.S.C. 8331(20) (as further defined in § 831.902 of this chapter) or 5 U.S.C. 8401(17) (as further defined in § 842.802 of this chapter), as applicable;

(2) In the case of an employee who holds a secondary position, as defined in § 831.902 of this chapter, and is subject to the Civil Service Retirement System, but who does not qualify to be considered a law enforcement officer within the meaning of 5 U.S.C. 8331(20), would so qualify if such employee had transferred directly to such position after serving as a law enforcement officer within the meaning of such section;

(3) In the case of an employee who holds a secondary position, as defined in § 842.802 of this chapter, and is subject to the Federal Employees Retirement System, but who does not qualify to be considered a law enforcement officer within the meaning of 5 U.S.C. 8401(17), would so qualify if such employee had transferred directly to such position after performing duties described in 5 U.S.C. 8401(17)(A) and (B) for at least 3 years; and

(4) In the case of an employee who is not subject to either the Civil Service Retirement System or the Federal Employees Retirement System—

(i) Holds a position that the agency head (as defined in §§ 831.902 and 842.802 of this chapter) determines would satisfy paragraph (1), (2), or (3) of this definition if the employee were subject to the Civil Service Retirement System or the Federal Employees Retirement System (subject to OPM oversight as described in §§ 831.911 and 842.808 of this chapter); or

(ii) Is a special agent in the Diplomatic Security Service.

* * * * *

Premium pay means additional pay authorized by subchapter V of chapter 55 of title 5, United States Code, and this subpart for overtime, night, Sunday, or holiday work; for compensatory time off; or for standby duty, administratively uncontrollable overtime work, or availability duty. The dollar value of compensatory time off is the amount of overtime pay the employee otherwise would have received for the hours during which compensatory time off was earned.

* * * * *

§ 550.107 [Amended]

21. In § 550.107, the introductory text is amended by removing ''any period'' and adding in its place ''any pay period''.

22. In § 550.111, a new paragraph (g) is added to read as follows:

§ 550.111 Authorization of overtime pay.

* * * * *

(g) An employee is not entitled to overtime pay under this subpart for time spent in training, except as provided in § 410.402 of this chapter.

23. In § 550.112, paragraphs (k), (l), and (m) are added to read as follows:

§ 550.112 Computation of overtime work.

* * * * *

(k) *Standby duty.* An employee is on duty, and time spent on standby duty is hours of work if—

(1) For work-related reasons, the employee is restricted to an agency's premises, or so close thereto that the employee cannot use the time effectively for his or her own purposes; or

(2) For work-related reasons, the employee, although not restricted to the agency's premises, is restricted to his or her living quarters or designated post of duty, has his or her activities substantially limited, and is required to remain in a state of readiness to perform work.

(l) *On-call status.* An employee is off duty, and time spent in an on-call status is not hours of work if—

(1) The employee is allowed to leave a telephone number or carry an electronic device for the purpose of being contacted, even though the employee is required to remain within a reasonable call-back status; or

(2) The employee is allowed to make arrangements for another person to perform any work that may arise during the on-call period.

(m) *Sleep and meal time.* (1) Bona fide sleep and meal periods may not be considered hours of work, except as provided by paragraphs (m)(2) and (m)(3) of this section. If a sleep or meal period is interrupted by a call to duty, the time spent on duty is hours of work.

(2) Sleep and meal periods during regularly scheduled tours of duty are hours of work for employees who receive annual premium pay for regularly scheduled standby duty under 5 U.S.C. 5545(c)(1).

(3) When employees have tours of duty of 24 hours or more during which they must remain within the confines of their duty station in a standby status, and for which they do not receive annual premium pay for regularly scheduled standby duty under 5 U.S.C. 5545(c)(1), the amount of bona fide sleep and meal time excluded from hours of work may not exceed 8 hours in any 24-hour period. No sleep time may be excluded unless the employee had the opportunity to have an uninterrupted period of at least 5 hours of sleep during the applicable sleep period. For tours of duty of less than 24 hours, agencies may not exclude on-duty sleep periods from hours of work, but must exclude bona fide meal periods during which the employee is completely relieved from duty.

24. In § 550.121, a new paragraph (c) is added to read as follows:

§ 550.121 Authorization of night pay differential.

* * * * *

(c) An employee is not entitled to night pay differential while engaged in training, except as provided in § 410.402 of this chapter.

25. In § 550.131, a new paragraph (d) is added to read as follows:

§ 550.131 Authorization of pay for holiday work.

* * * * *

(d) An employee is not entitled to holiday premium pay while engaged in training, except as provided in § 410.402 of this chapter.

§ 550.153 [Amended]

26. In § 550.153, paragraph (d)(1) is amended by removing ''§ 550.112(f)'' and adding in its place ''§ 550.112(h)'.

27. In § 550.162, a new paragraph (f) is added to read as follows:

§ 550.162 Payment provisions.

* * * * *

(f) Unless an agency discontinues authorization of premium pay under § 550.141 or § 550.151 for all similar positions, it may not discontinue authorization of such premium pay for an individual employee's position—

(1) During a period of paid leave elected by the employee and approved by the agency in lieu of benefits under the Federal Employees' Compensation Act, as amended (5 U.S.C. 8101 *et seq.*), following a job-related injury;

(2) During a period of continuation of pay under the Federal Employees' Compensation Act, as amended (5 U.S.C. 8101 *et seq.*);

(3) During a period of leave without pay, if the employee is in receipt of benefits under the Federal Employees' Compensation Act, as amended (5 U.S.C. 8101 *et seq.*).

28. In § 550.171, the current paragraph is designated as paragraph (a), and a new paragraph (b) is added to read as follows:

§ 550.171 Authorization of pay for Sunday work.

* * * * *

(b) An employee is not entitled to Sunday premium pay while engaged in training, except as provided in § 410.402 of this chapter.

Subpart B—Advances in Pay

29. The authority citation for subpart B of part 550 continues to read as follows:

Authority: 5 U.S.C. 5524a, 5545a(h)(2)(B); sections 302 and 404 of the Federal Employees Pay Comparability Act of 1990 (Public Law 101–509), 104 Stat. 1462 and 1466, respectively; E.O. 12748, 3 CFR, 1992 Comp., p. 316.

30. In § 550.202, paragraph (c) of the definition of *newly appointed* is revised to read as follows:

§ 550.202 Definitions.

* * * * *

Newly appointed * * *

(c) A permanent appointment in the competitive service following termination of employment under the Student Educational Employment Program (as described in § 213.3202 of this chapter), provided such employee—

(1) Was separated from the service, in a nonpay status, or a combination of both during the entire 90-day period immediately before the permanent appointment; and

(2) Has fully repaid any former advance in pay under § 550.205.

* * * * *

§ 550.205 [Amended]

31. In § 550.205, paragraph (b) is amended by removing the word ''recover'' and adding in its place the word ''recovery''.

Subpart C—Allotments and Assignments From Federal Employees

32. The authority citation for subpart C of part 550 continues to read as follows:

Authority: 5 U.S.C. 5527, E.O. 10982, 3 CFR 1959–1963 Comp., p. 502.

§ 550.311 [Amended]

33. In § 550.311, paragraph (b) is amended by removing ''paragraph (b)'' and adding in its place ''paragraph (a)''.

34. In § 550.312, paragraphs (a), (c), (d), and (e) are revised to read as follows:

§ 550.312 General limitations.

(a) The allotter must specifically designate the allottee and the amount of the allotment.

* * * * *

(c) The allotter must personally authorize a change or cancellation of an allotment.

(d) The agency has no liability in connection with any authorized allotment disbursed by the agency in accordance with the allotter's request.

(e) Any disputes regarding any authorized allotment are a matter between the allotter and the allottee.

35. Section 550.341 is revised to read as follows:

§ 550.341 Scope.

An agency must permit an employee to make an allotment for charitable contributions to a Combined Federal Campaign in accordance with § 950.901 of this chapter.

§ 550.342 [Amended]

36. Section 550.342 is removed.

Subpart G—Severance Pay

37. The authority citation for subpart G of part 550 continues to read as follows:

Authority: 5 U.S.C. 5595; E.O. 11257, 3 CFR, 1964–1965 Comp., p. 357.

38. In § 550.703, the definitions of *commuting area* and *employee* are revised; a new definition of *employed by the Government of the United States* is added in alphabetical order; the definition of *involuntary separation* is amended by removing the words ''the commuting area'' in both places and adding in each place the words ''his or her commuting area''; the definition of *immediate annuity* is revised; the definition of *nonqualifying appointment* is revised; paragraph (g) of the definition of *qualifying appointment* is revised; and paragraph (c)(3) of the definition of *reasonable offer* is revised to read as follows:

§ 550.703 Definitions.

* * * * *

Commuting area means the geographic area surrounding a work site that encompasses the localities where people live and reasonably can be expected to travel back and forth daily to work, as established by the employing agency. In the case of an employee whose place of residence is outside the standard commuting area for a proposed new work site, the employee's commuting area is deemed to include the expanded area surrounding the employee's place of residence and including all destinations that can be reached via a commuting trip that is not significantly more burdensome than the current commuting trip. For this purpose, a commuting trip to a new work site is considered significantly more burdensome if it would compel the employee to change his or her place of residence in order to continue employment, taking into account commuting time and distance, availability of public transportation, cost, and any other relevant factors.

Employee (for purposes of establishing initial entitlement to severance pay upon separation) means an employee as defined in 5 U.S.C. 5595(a)(2), excluding an individual employed by the government of the District of Columbia. (Note: The term ''individual employed'' in 5 U.S.C.

5595(a)(2)(A) refers to an ''employee'' as defined in 5 U.S.C. 2105.)

Employed by the Government of the United States refers to employment by any part of the Government of the United States, including the United States Postal Service and similar independent entities, but excluding enlistment or activation in the armed forces (as defined in 5 U.S.C. 2101).

Immediate annuity means—

(a) A recurring benefit payable under a retirement system applicable to Federal civilian employees or members of the uniformed services that the individual is eligible to receive (disregarding any offset described in § 550.704(b)(5)) at the time of the involuntary separation from civilian service or that begins to accrue within 1 month after such separation, excluding any Social Security retirement benefit; or

* * * * *

(b) A benefit that meets the conditions in paragraph (a) of this definition, except that the benefit begins to accrue more than 1 month after separation solely because the employee elected a later commencing date (such as allowed under § 842.204 of this chapter).

Nonqualifying appointment means an appointment that does not convey eligibility for severance pay under this subpart, including—

(a) An appointment at a noncovered agency;

(b) An appointment in which the employee has an intermittent work schedule;

(c) A Presidential appointment;

(d) An emergency appointment;

(e) An excepted appointment under Schedule C; a noncareer appointment in the Senior Executive Service, as defined in 5 U.S.C. 3132(a); or an equivalent appointment made for similar purposes; and

(f) A time-limited appointment (except for a time-limited appointment that is qualifying because it is made effective within 3 calendar days after separation from a qualifying appointment), including—

(1) A term appointment;

(2) A temporary appointment pending establishment of a register (TAPER);

(3) An overseas limited appointment with a time limitation;

(4) A limited term or limited emergency appointment in the Senior Executive Service, as defined in 5 U.S.C. 3132(a), or an equivalent appointment made for similar purposes;

(5) A limited executive assignment under part 305 of this chapter or an equivalent appointment made for similar purposes;

(6) A Veterans Readjustment Appointment under part 307 of this chapter; and

(7) A Presidential Management Intern appointment under part 362 of this chapter.

Qualifying appointment * * *

(g) A time-limited appointment (including a series of time-limited appointments by the same agency without any intervening break in service) for full-time employment that takes effect within 3 calendar days after the end of one of the qualifying appointments listed in paragraphs (a) through (f) of this definition, provided the time-limited appointment is not nonqualifying on grounds other than the time-limited nature of the appointment.

* * * * *

Reasonable offer means * * *

(c) * * *

(3) Of equal or greater tenure and with the same work schedule (part-time or full-time); and

* * * * *

39. In section 550.706, paragraph (a) is revised and paragraph (c) is added to read as follows:

§ 550.706 Criteria for meeting the requirement for involuntary separation.

(a) Employees who resign because they expect to be involuntarily separated are considered to have been involuntarily separated if they resign after receiving—

(1) Specific written notice that they will be involuntarily separated by a particular action effective on a particular date; or

(2) A general written notice of reduction in force or transfer of functions which—

(i) Is issued by a properly authorized agency official;

(ii) Announces that the agency has decided to abolish, or transfer to another commuting area, all positions in the competitive area (as defined in § 351.402 of this chapter) by a particular date (no more than 1 year after the date of the notice); and

(iii) States that, for all employees in that competitive area, a resignation following receipt of the notice constitutes an involuntary separation for severance pay purposes.

* * * * *

(c) A resignation is not considered an involuntary separation if the specific or general written notice is canceled before the separation (based on that resignation) takes effect.

40. In § 550.707, the section heading is revised; paragraph (b) is revised; and a new paragraph (d) is added to read as follows:

§ 550.707 Computation of severance pay fund.

* * * * *

(b) *Basic severance pay allowance for employees with variable work schedules or rates of basic pay.* In the following circumstances, the weekly rate of basic pay used in computing the basic severance pay allowance is determined based on the weekly average for the last position held by the employee during the 26 biweekly pay periods immediately preceding separation, as follows:

(1) For positions in which the number of hours in the employee's basic work schedule (excluding overtime hours) varies during the year due to part-time work requirements, compute the weekly average of those hours and multiply that average by the hourly rate of basic pay in effect at separation.

(2) For positions in which the rate of annual premium pay for standby duty regularly varies throughout the year, compute the average standby duty premium pay percentage and multiply that percentage by the weekly rate of basic pay (as defined in § 550.103) in effect at separation.

(3) For prevailing rate schedule positions in which the amount of night shift differential pay under 5 U.S.C. 5343(f) varies from week to week under a regularly recurring cycle of work schedules, determine for each week in the averaging period the value of night shift differential pay expressed as a percentage of each week's scheduled rate of pay (as defined in § 532.401 of this chapter), compute the weekly average percentage, and multiply that percentage by the weekly scheduled rate of pay in effect at separation.

(4) For positions with seasonal work requirements, compute the weekly average of hours in a pay status (excluding overtime hours) and multiply that average by the hourly rate of basic pay in effect at separation.

* * * * *

(d) *Lifetime limitation.* The severance pay fund is limited to that amount which would provide 52 weeks of severance pay (taking into account weeks of severance pay previously received, as provided in § 550.712).

41. In § 550.708, paragraph (a) is revised; paragraph (c) is amended by removing the word ''and'' at the end of the paragraph; paragraph (d) is amended by removing the period at the end of the paragraph and adding a semicolon and the word ''and'' in its place; and a new paragraph (e) is added to read as follows:

§ 550.708 Creditable service.

* * * * *

(a) Civilian service as an employee (as defined in 5 U.S.C. 2105), excluding time during a period of nonpay status that is not creditable for annual leave accrual purposes under 5 U.S.C. 6303(a);

* * * * *

(e) Service performed with the government of the District of Columbia by an individual first employed by that government before October 1, 1987, excluding service as a teacher or librarian of the public schools of the District of Columbia.

* * * * *

42. Section 550.709 is revised to read as follows:

§ 550.709 Accrual and payment of severance pay.

(a) Severance pay accrues on a day-to-day basis following the recipient's separation from Federal employment. If severance pay begins in the middle of a pay period, 1 day of severance pay accrues for each workday or applicable holiday left in the pay period at the same rate at which basic pay would have accrued if the recipient were still employed. Thereafter, accrual is based on days from Monday through Friday, with each day worth one-fifth of 1 week's severance pay. Accrual ceases when the severance pay entitlement is suspended or terminated, as provided in §§ 550.711 and 550.712. If severance pay is suspended during a nonqualifying time-limited appointment as provided in § 550.711, accrual will resume following separation from that appointment.

(b) Severance payments must be made at the same pay period intervals that salary payments would be made if the recipient were still employed. The amount of the severance payment is computed using the recipient's rate of basic pay in effect immediately before separation, with credit for each day of severance pay accrual during the pay period corresponding to the payment date. A severance payment is subject to appropriate deductions for income and Social Security taxes.

(c) When an individual receives severance pay as the result of separation from a qualifying time-limited appointment, the severance payment is based on the rate of basic pay received at the time of separation from the qualifying time-limited appointment.

(d) When an individual is in a nonpay status immediately before separation, the amount of the severance payment is determined using the basic pay that he or she would have received if he or she had been in a pay status at the time of separation.

(e) When an individual's severance pay fund is computed under § 550.707(b) using an average rate of basic pay, that average rate is used to determine the amount of the severance payment. Exception: In the case of a seasonal employee, the agency may choose instead to use the employee's rate of basic pay at separation (as computed based on the employee's work schedule during the established seasonal work period) and then authorize severance payments only during that seasonal work period.

(f) In the case of individuals who become employed by a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard under the conditions described in 5 U.S.C. 5595(h)(4), payment of severance pay may be suspended consistent with the rules in 5 U.S.C. 5595(h) and any supplemental regulations issued by the Department of Defense.

(g) Notwithstanding paragraph (b) of this section, the Department of Defense may, upon application by an eligible separated employee, pay the total amount of severance pay in one lump sum, subject to section 1035 of Public Law 104–106 and any other requirements established by the Department of Defense. This authority applies to severance payments based on separations taking effect on or after February 10, 1996, and before October 1, 1999.

43. Section 550.710 is revised to read as follows:

§ 550.710 Suspension of severance pay.

When an individual entitled to severance pay is employed by the Government of the United States or the government of the District of Columbia under a nonqualifying time-limited appointment, severance pay must be suspended during the life of the appointment. Severance pay resumes, without any recomputation, when the employee separates from the nonqualifying time-limited appointment.

44. Section 550.711 is revised to read as follows:

§ 550.711 Termination of severance pay entitlement.

Entitlement to severance pay ends when—

(a) The individual entitled to severance pay is employed by the Government of the United States or the government of the District of Columbia, unless employed under a nonqualifying time-limited appointment as described in § 550.710; or

(b) The severance pay fund is exhausted.

§ 550.713 [Amended]

45. Section 550.713 is amended by removing the second sentence.

Subpart H—Back Pay

46. The authority citation for subpart H of part 550 continues to read as follows:

Authority: 5 U.S.C. 5596(c); Pub. L. 100–202, 101 Stat. 1329.

47. In § 550.803, the definitions of *employee* and *pay, allowances, and differentials* are revised to read as follows:

§ 550.803 Definitions.

* * * * *

Employee means an employee of an agency. When the term *employee* is used to describe an individual who is making a back pay claim, it also may mean a former employee.

* * * * *

Pay, allowances, and differentials means pay, leave, and other monetary employment benefits to which an employee is entitled by statute or regulation and which are payable by the employing agency to an employee during periods of Federal employment. Agency and employee contributions to a retirement investment fund, such as the Thrift Savings Plan, are not covered. Monetary benefits payable to separated or retired employees based upon a separation from service, such as retirement benefits, severance payments, and lump-sum payments for annual leave, are not covered.

* * * * *

48. In § 550.805, paragraph (e) is revised and a new paragraph (h) is added to read as follows:

§ 550.805 Back pay computations.

* * * * *

(e) In computing the net amount of back pay payable under section 5596 of title 5, United States Code, and this subpart, an agency must make the following offsets and deductions (in the order shown) from the gross back pay award:

(1) Any outside earnings (gross earnings less any associated business losses and ordinary and necessary business expenses) received by an employee for other employment (including a business enterprise) undertaken to replace the employment from which the employee was separated by the unjustified or unwarranted personnel action during the interim period covered by the corrective action. Do not count earnings from additional or ''moonlight'' employment the employee may have engaged in both while Federally employed and erroneously separated.

(2) Any erroneous payments received from the Government as a result of the

unjustified or unwarranted personnel action, which, in the case of erroneous payments received from a Federal employee retirement system, must be returned to the appropriate system. Such payments must be recovered from the back pay award in the following order:

(i) Retirement annuity payments (i.e., gross annuity less deductions for life insurance and health benefits premiums, if those premiums can be recovered by the affected retirement system from the insurance carrier);

(ii) Refunds of retirement contributions (i.e., gross refund before any deductions);

(iii) Severance pay (i.e., gross payments before any deductions); and

(iv) Lump-sum payment for annual leave (i.e., gross payment before any deductions).

(3) Authorized deductions of the type that would have been made from the employee's pay (if paid when properly due) in accordance with the normal order of precedence for deductions from pay established by the agency, subject to any applicable law and regulation, including, but not limited to, the following types of deductions, as applicable:

(i) Mandatory employee retirement contributions toward a defined benefit plan, such as the Civil Service Retirement System or the defined benefit component of the Federal Employees Retirement System;

(ii) Social Security taxes and Medicare taxes;

(iii) Health benefits premiums, if coverage continued during a period of erroneous retirement (with paid premiums recoverable by the retirement system) or is retroactively reinstated at the employee's election under 5 U.S.C. 8908(a);

(iv) Life insurance premiums if—

(A) Coverage continued during a period of erroneous retirement;

(B) Coverage was stopped during an erroneous suspension or separation and the employee suffered death or accidental dismemberment during that period (consistent with 5 U.S.C. 8706(d)); or

(C) Additional premiums are owed due to a retroactive increase in basic pay; and

(v) Federal income tax withholdings.

(Note to paragraph (e)(3): See appendix A to this subpart for additional information on computing certain deductions.)

(4) Administrative offsets under 31 U.S.C. 3716 to recover any other outstanding debt(s) owed to the Federal Government by the employee, as appropriate.

* * * * *

(h) Agencies must correct errors that affect an employee's Thrift Savings Plan account consistent with regulations prescribed by the Federal Retirement Thrift Investment Board. (See parts 1605 and 1606 of this title.)

49. In § 550.806, paragraph (h) is removed, and paragraph (a) is amended by redesignating paragraph (a) as paragraph (a)(1) and adding a new paragraph (a)(2) to read as follows:

§ 550.806 Interest computations.

(a) * * *

(2) Interest accrual ends at a time selected by the agency that is no more than 30 days before the date of the back pay interest payment. No interest is payable if a complete back pay payment is made within 30 days after any erroneous withdrawal, reduction, or denial of a payment, and the interest accrual ending date is set to coincide with the interest accrual starting date.

* * * * *

50. A new appendix A is added to subpart H of part 550 to read as follows:

Appendix A to Subpart H of Part 550—Information on Computing Certain Common Deductions From Back Pay Awards

To determine the net back payment owed an employee, an agency must make certain required deductions. (See § 550.805(e)(3).) To compute these deductions, an agency must determine the appropriate base or follow other rules. Some deductions, such as tax deductions, are not subject to OPM regulation. To assist agencies, this appendix summarizes the rules for certain common deductions. For further information on Federal tax deductions from back pay awards, please contact the Internal Revenue Service directly or review relevant IRS publications.

Type of deduction	How to compute the deduction
Mandatory employee retirement contributions.	Compute the deduction based on the basic pay portion of gross back pay before adding interest or applying any offset or deduction.
Life insurance premiums	Compute the deduction based on the basic pay portion of gross back pay before adding interest or applying any offset or deduction.
Social Security (OASDI) and Medicare taxes.	Compute the deduction based on adjusted gross back pay (gross back pay less the offset for outside earnings under § 550.805(e)(1), but before adding interest). The deduction may be reduced dollar-for-dollar by the amount of any Social Security or Medicare taxes that were withheld from erroneous payments made in the same calendar year as the back pay award, but only if— (1) those erroneous payments were actually recovered by the Government by offsetting the back pay award as provided in § 550.805(e)(2); and (2) those withheld taxes have not already been repaid to the employee. Note: Social Security taxes are subject to the applicable Social Security tax wage base limit. In addition, see IRS guidance regarding possible correction and refunding of Social Security and Medicare taxes withheld from erroneous payments in a prior calendar year.
Federal income tax withholdings	Compute the deduction based on adjusted gross back pay (gross back pay less the offset for outside earnings under § 550.805(e)(1), but before adding interest) less any part of back pay not subject to income tax deductions, such as employee contributions to the Thrift Savings Plan and nonforeign area cost-of-living allowances. The deduction may be reduced dollar-for-dollar by the amount of any Federal income taxes withheld from erroneous payments made in the same calendar year as the back pay award, but only if— (1) those erroneous payments were actually recovered by the Government by offsetting the back pay award as provided in § 550.805(e)(2); and (2) those withheld taxes have not already been repaid to the employee. Note: Additional Federal income tax withholdings from the interest portion of the back pay award may be required by the Internal Revenue Service in certain specific circumstances.

Subpart I—Pay for Duty Involving Physical Hardship or Hazard

51. The authority citation for subpart I of part 550 continues to read as follows:

Authority: 5 U.S.C. 5545(d), 5548(b).

52. In § 550.902, the definition of *employee* is revised to read as follows:

§ 550.902 Definitions.

* * * * *

Employee means an employee covered by the General Schedule (i.e., covered by chapter 51 and subchapter III of chapter 53 of title 5, United States Code).

53. In § 550.903, the introductory text of paragraph (b) is revised to read as follows:

§ 550.903 Establishment of hazard pay differentials.

* * * * *

(b) Amendments to appendix A of this subpart may be made by OPM on its own motion or at the request of the head of an agency (or authorized designee). The head of an agency (or authorized designee) may recommend the rate of hazard pay differential to be established and must submit, with its request for an amendment, information about the hazardous duty or duty involving physical hardship showing—

* * * * *

54. Section 550.905 is revised to read as follows:

§ 550.905 Payment of hazard pay differential.

(a) When an employee performs duty for which a hazard pay differential is authorized, the agency must pay the hazard pay differential for the hours in a pay status on the day (a calendar day or a 24-hour period, when designated by the agency) on which the duty is performed, except as provided in paragraph (b) of this section. Hours in a pay status for work performed during a continuous period extending over 2 days must be considered to have been performed on the day on which the work began, and the allowable differential must be charged to that day.

(b) Employees may not be paid a hazardous duty differential for hours for which they receive annual premium pay for regularly scheduled standby duty under § 550.141, annual premium pay for administratively uncontrollable overtime work under § 550.151, or law enforcement availability pay under § 550.181.

PART 551—PAY ADMINISTRATION UNDER THE FAIR LABOR STANDARDS ACT

55. The authority citation for part 551 continues to read as follows:

Authority: 5 U.S.C. 5542(c); Sec. 4(f) of the Fair Labor Standards Act of 1938, as amended by Pub. L. 93–259, 88 Stat. 55 (29 U.S.C. 204f).

Subpart D—Hours of Work

§ 551.401 [Amended]

56. In § 551.401, paragraphs (f) and (g) are amended by removing ''§ 410.602'' and adding in its place ''§ 410.402''.

§ 551.423 [Amended]

57. In § 551.423, paragraph (a)(2)(ii) is amended by adding at the end of the paragraph ''(See also § 410.402(d) of this chapter.)'', and paragraph (a)(3) is amended by removing the period at the end of the paragraph and adding in its place '', except as provided by § 410.402(b) of this chapter and paragraphs (f) and (g) of § 551.401.''

58. In section § 551.432, paragraphs (b) and (c) are revised and a new paragraph (e) is added to read as follows:

§ 551.432 Sleep time.

* * * * *

(b) For employees engaged in law enforcement or fire protection activities who receive annual premium pay under 5 U.S.C. 5545(c) (1) or (2), the requirements of paragraph (a) of this section apply, except that on-duty sleep time may be excluded from hours of work only if the tour of duty is more than 24 hours.

(c) The total amount of bona fide sleep and meal time that may be excluded from hours of work may not exceed 8 hours in a 24-hour period.

* * * * *

(e) On-duty sleep and meal time during regularly scheduled hours for which standby duty premium pay under 5 U.S.C. 5545(c)(1) is payable may not be excluded from hours of work.

Subpart E—Overtime Pay Provisions

59. In § 551.501, paragraph (a)(2) is amended by removing ''§ 410.602'' and adding in its place ''§ 410.402'', and paragraph (a)(5) is revised to read as follows:

§ 551.501 Overtime pay.

(a) * * *

(5) On the basis of hours of work in excess of 40 hours in a workweek for an employee engaged in fire protection or law enforcement activities when the employee receives annual premium pay under 5 U.S.C. 5545(c) (1) or (2) or is not an employee, as defined in 5 U.S.C. 5541(2), for the purposes of 5 U.S.C. 5542, 5543, and 5544;

* * * * *

60. In § 551.512, paragraph (b) is amended by removing ''(exclusive of any premiums or differentials)'' and adding in its place ''(exclusive of any premiums, differentials, bonuses, or awards)'', and a new paragraph (d) is added to read as follows:

§ 551.512 Overtime pay entitlement.

* * * * *

(d) When an employee is granted a nondiscretionary individual or group (e.g., gainsharing) award, the award must be included in determining overtime pay for the period of time during which the award was earned. An agency may meet the overtime pay requirements for the period of time during which the award was earned by employing any one of the following procedures—

(1) *Recomputation method.* (i) Allocate the award payable to each individual employee under the award plan to the weeks or hours when it was earned;

(ii) Include any allocated award payment in total remuneration in computing the employee's hourly regular rate of pay for each applicable workweek in the award period;

(iii) Recompute the employee's overtime pay for each applicable workweek in the bonus period; and

(iv) Determine the total additional overtime pay owed.

(2) *Percentage awards method.* Identify the amount of the award as a fixed percentage of total pay (straight time pay plus overtime pay) earned by the employee during the award period. The product of total earnings times the award percentage satisfies in full the overtime pay requirements.

(3) *Boosted hour method.* (i) Identify the amount of the individual award or the group award under the bonus plan and the period of time during which it was earned;

(ii) Determine the number of boosted hours for the individual employee or for all employees under the group award plan by summing the total hours of work (straight time hours plus overtime hours) plus one-half of the total number of overtime hours;

(iii) Divide the amount of the individual award or the group award fund by the number of boosted hours for the individual employee or for all employees under the group award plan, as applicable, to determine the amount of the award allocable to each hour; and

(iv) Multiply this hourly award amount by the number of boosted hours credited to the individual employee or to each employee under the group award plan during the award period, as applicable, to determine the amount of the award for the individual employee or for each employee under the group award plan.

§ 551.541 [Amended]

61. In § 551.541, paragraph (b) is amended by removing ''511.411(c)'' and adding in its place ''551.411(c)''.

PART 575—RECRUITMENT AND RELOCATION BONUSES; RETENTION ALLOWANCES; SUPERVISORY DIFFERENTIALS

62. The authority citation for part 575 is revised to read as follows:

Authority: 5 U.S.C. 1104(a)(2), 5753, 5754, and 5755; secs. 302 and 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), 104 Stat. 1462 and 1466, respectively; E.O. 12748, 3 CFR, 1992 Comp., p. 316.

Subpart A—Recruitment Bonuses

63. In § 575.102, paragraph (a)(3) is revised to read as follows:

§ 575.102 Delegation of authority.

(a) * * *

(3) A Senior Executive Service position paid under 5 U.S.C. 5383 or a Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service position paid under 5 U.S.C. 3151.

* * * * *

64. In § 575.103, the definition of *involuntary separation* is amended by removing the words ''the commuting area'' wherever it appears and adding in its place the words ''his or her commuting area''; the definition of *service agreement* is amended by removing the words ''of a minimum of 12 months'' and the definition of *commuting area* is revised to read as follows:

§ 575.103 Definitions.

* * * * *

Commuting area has the meaning given that term in § 575.203.

* * * * *

Subpart B—Relocation Bonuses

65. In § 575.202, paragraph (a)(3) is revised to read as follows:

§ 575.202 Delegation of authority.

(a) * * *

(3) A Senior Executive Service position paid under 5 U.S.C. 5383 or a Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service position paid under 5 U.S.C. 3151.

* * * * *

66. In § 575.203, the definition of *involuntary separation* is amended by removing the words ''the commuting area'' wherever it appears and adding in its place the words ''his or her commuting area'; and the definitions of *commuting area* and *employee* are revised to read as follows:

§ 575.203 Definitions.

* * * * *

Commuting area means the geographic area surrounding a work site that encompasses the localities where people live and reasonably can be expected to travel back and forth daily to work, as established by the employing agency. In the case of an employee whose place of residence is outside the standard commuting area for a proposed new work site, the employee's commuting area is deemed to include the expanded area surrounding the employee's place of residence and including all destinations that can be reached via a commuting trip that is not significantly more burdensome than the current commuting trip. For this purpose, a commuting trip to a new work site is considered significantly more burdensome if it would compel the employee to change his or her place of residence in order to continue employment, taking into account commuting time and distance, availability of public transportation, cost, and any other relevant factors.

Employee means—

(a) An individual in the civil service (as defined in 5 U.S.C. 2101) who is relocated without a break in service upon appointment to a position in or under an agency in a different commuting area; or

(b) An employee in or under an agency whose duty station is changed permanently or temporarily to a different commuting area.

* * * * *

§ 575.205 [Amended]

67. In § 575.205, paragraph (b)(5) is amended by adding a parenthesis after the word ''Code''.

Subpart C—Retention Allowances

68. In § 575.302, paragraph (a)(3) is revised to read as follows:

§ 575.302 Delegation of authority.

(a) * * *

(3) A Senior Executive Service position paid under 5 U.S.C. 5383 or a Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service position paid under 5 U.S.C. 3151.

* * * * *

69. In § 575.307, paragraph (a) is revised to read as follows:

§ 575.307 Reduction or termination of retention allowances.

(a) The agency must reduce or terminate the authorized amount of a retention allowance to the extent necessary to ensure that the employee's estimated aggregate compensation, as defined in § 530.202 of this chapter, does not exceed the rate for level I of the Executive Schedule at the end of the calendar year.

* * * * *

PART 591—ALLOWANCES AND DIFFERENTIALS

Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas

70. The authority citation for subpart B of part 591 continues to read as follows:

Authority: 5 U.S.C. 5941; E.O. 10000, 3 CFR, 1943–1948 Comp., p. 792; and E.O. 12510, 3 CFR, 1985 Comp., 338.

71. In § 591.201, the definition of *official duty station* is revised to read as follows:

§ 591.201 Definitions.

* * * * *

Official duty station means the duty station for an employee's position of record as indicated on his or her most recent notification of personnel action, excluding a new duty station for an assignment that is followed immediately (i.e., within 3 workdays) by a reduction in force resulting in the employee's separation before he or she is required to report for duty at the new location. For an employee who is authorized to receive relocation allowances under 5 U.S.C. 5737 in connection with an extended assignment, the temporary duty station associated with that assignment is the employee's official duty station.

* * * * *

PART 610—HOURS OF DUTY

Subpart A—Weekly and Daily Scheduling of Work

72. The authority citation for subpart A of part 610 continues to read as follows:

Authority: 5 U.S.C. 6101; sec. 1(1) of E.O. 11228, 3 CFR, 1964–1965 Comp., p. 317.

73. In § 610.102, the definition of *administrative workweek* is revised to read as follows:

§ 610.102 Definitions.

* * * * *

Administrative workweek means any period of 7 consecutive 24-hour periods designated in advance by the head of the agency under section 6101 of title 5, United States Code.

* * * * *

§ 610.111 [Amended]

74. Section 610.111 is amended by removing the word ''regulation'' in the introductory text of paragraph (a) and adding the words ''a written agency policy statement'' in its place; by removing the word ''regulation'' in paragraphs (a)(1) and (a)(2) and adding in each place the words ''written agency policy statement''; and by removing the words ''regulation of the agency'' in paragraph (c)(2) and adding the words ''a written agency policy statement''.

Subpart D—Flexible and Compressed Work Schedules

75. The authority citation for subpart D of part 610 continues to read as follows:

Authority: 5 U.S.C. 6133(a).

76. In § 610.407, the current paragraph is designated as paragraph (a), and a new paragraph (b) is added to read as follows:

§ 610.407 Premium pay for holiday work for employees on compressed work schedules.

* * * * *

(b) An employee on a compressed work schedule is not entitled to holiday premium pay while engaged in training, except as provided in § 410.402 of this chapter.

[FR Doc. 98–31284 Filed 11–23–98; 8:45 am]

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 208, 240, 274a, and 299

[INS No. 1915–98; AG Order No. 2192–98]

RIN 1115–AF14

Suspension of Deportation and Special Rule Cancellation of Removal for Certain Nationals of Guatemala, El Salvador, and Former Soviet Bloc Countries

AGENCY: Immigration and Naturalization Service and Executive Office for Immigration Review, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Department of Justice (Department) regulations by offering certain beneficiaries of the Nicaraguan Adjustment and Central American Relief Act (NACARA) who currently have asylum applications pending with the Immigration and Naturalization Service (Service), and their qualified dependents, the option of applying to the Service for suspension of deportation or cancellation of removal under the statutory requirements set forth in NACARA (''special rule cancellation of removal'').

Described in very general terms, both suspension of deportation and special rule cancellation of removal are forms of discretionary relief that, if granted, permit an individual subject to deportation or removal to remain in the United States. Integrating the processing of certain applications under NACARA into the Service's Asylum Program will provide an efficient mechanism for considering the suspension of deportation and special rule cancellation of removal applications of most of the approximately 240,000 registered class members of the *American Baptist Churches* v. *Thornburgh (ABC)* litigation and certain other beneficiaries of NACARA who have asylum applications pending with the Service, as well as their qualified family members. The Immigration Court will retain exclusive jurisdiction over most suspension of deportation and special rule cancellation of removal applications submitted by NACARA beneficiaries who have been placed in deportation or removal proceedings.

In addition, this rule proposes to compile and codify the relevant factors and standards for extreme hardship identified within existing case law in order to provide a more uniform and focused mechanism for evaluating this aspect of a person's eligibility for suspension of deportation or special rule cancellation of removal.

DATES: Written comments must be submitted on or before January 25, 1999.

ADDRESSES: Please submit written comments in triplicate to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1915–98 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: *For matters relating to the Immigration and Naturalization Service:* John Lafferty or Wenona Paul, International Affairs, Department of Justice, Immigration and Naturalization Service, 425 I Street NW., ULLICO Bldg., third floor, Washington, DC 20536, telephone number (202) 305–2663. *For matters relating to the Executive Office for Immigration Review:* Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone number (703) 305–0470.

SUPPLEMENTARY INFORMATION:

I. Background

What is the Nicaraguan Adjustment and Central American Relief Act? On November 19, 1997, President Clinton signed the Nicaraguan Adjustment and Central American Relief Act, enacted as title II of Pub. L. No. 105–100 (111 Stat. 2160, 2193) (as amended by the Technical Corrections to the Nicaraguan Adjustment and Central American Relief Act, Pub. L. No. 105–139 (111 Stat. 2644)). This new law amended the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and the Immigration and Nationality Act (Act) by providing several distinct forms of relief to certain aliens who are presently residing unlawfully in the United States. Section 202 of NACARA permits certain Nicaraguan and Cuban nationals who meet the standards set forth in that section to apply for adjustment of status to that of lawful permanent resident. The interim rule governing applications for adjustment under section 202 was published in the **Federal Register** on May 21, 1998, at 63 FR 27823.

This proposed rule implements section 203 of NACARA, which permits certain Guatemalans, Salvadorans, and nationals of the former Soviet bloc to apply for suspension of deportation or

cancellation of removal under special provisions set forth in that section. Unlike those applying under section 202, NACARA beneficiaries under section 203 may not become lawful permanent residents unless they meet the statutory requirements for suspension of deportation or cancellation of removal and are found to merit such relief as a matter of discretion.

Throughout the discussion of this proposed rule, the term ''NACARA beneficiaries'' refers to those persons listed in section 309(c)(5)(C)(i) of IIRIRA, as amended by NACARA, who may be eligible to apply for suspension of deportation or cancellation of removal pursuant to the NACARA amendments to IIRIRA.

How does NACARA affect applications for suspension of deportation and cancellation of removal? The Illegal Immigration Reform and Immigrant Responsibility Act, enacted by Congress on September 30, 1996, consolidated the dual system of exclusion and deportation proceedings into removal proceedings for persons placed in proceedings on or after April 1, 1997. Individuals placed in deportation proceedings prior to April 1, 1997, can apply for suspension of deportation under former section 244 of the Act, as in effect prior to April 1, 1997. Suspension of deportation is a discretionary form of relief available to individuals who can establish continuous physical presence in the United States for 7 years prior to the date of application, good moral character during that period, and that deportation would result in extreme hardship to the applicant or to the applicant's parent, spouse, or child who is a lawful permanent resident or United States citizen. Different standards apply to individuals who are deportable on certain criminal, document fraud, or security grounds. Other special exceptions apply to battered spouses and children and to individuals who have served in the United States military.

Under the new framework created by IIRIRA, the discretionary relief of suspension of deportation was replaced by section 240A, cancellation of removal. Congress limited the availability of this type of relief in three fundamental ways. First, Congress amended the rules relating to time counted toward physical presence in the United States. For persons seeking cancellation of removal, section 240A(d)(1) of the Act provides that time counted towards continuous physical presence ceases when a person is served with a charging document and placed in removal proceedings or when a person commits an offense referred to in section 212(a)(2) of the Act that renders the person inadmissible to the United States under section 212(a)(2) or removable from the United States under section 237(a)(2) or 237(a)(4) of the Act, whichever is earlier (the ''stop-time'' rule). The Board of Immigration Appeals (Board) held that, under the transitional rules at section 309(c)(5) of IIRIRA governing persons in deportation proceedings, this ''stop-time'' rule applied equally to individuals placed in proceedings prior to April 1, 1997, who had applied for or who may apply for suspension of deportation. *Matter of N–J–B–*, Int. Dec. #3309 (BIA 1997). In addition, section 240A(d)(2) addresses certain breaks in presence in the United States, for purposes of cancellation of removal eligibility, by providing that an alien shall be considered to have failed to maintain continuous physical presence in the United States if the alien has departed from the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days.

Second, IIRIRA heightened the eligibility standards for both the required period of continuous physical presence in the United States and the degree and type of hardship that must result from removal. Generally, to be eligible for cancellation of removal under the Act as amended by IIRIRA, the applicant must establish 10 years of continuous physical presence in the United States, good moral character during that period, and that removal would result in exceptional and extremely unusual hardship to the applicant's spouse, parent, or child who is a lawful permanent resident or United States citizen.

Third, Congress provided that no more than 4,000 aliens may have their deportation suspended or removal canceled, and their status adjusted pursuant thereto, in any fiscal year.

With certain exceptions, section 203 of NACARA permits certain Guatemalans, Salvadorans, and nationals of former Soviet bloc countries to apply for suspension of deportation or cancellation of removal under the standards that existed prior to enactment of IIRIRA. Specifically, NACARA exempts qualified Guatemalans, Salvadorans, and nationals of former Soviet bloc countries from the ''stop-time'' rule. In addition, section 203(b) of NACARA created a special rule for cancellation of removal for NACARA beneficiaries who have not been placed in deportation proceedings. Special rule cancellation of removal permits these individuals to apply for cancellation of removal under standards that are generally the same as those for suspension of deportation.

Section 204 of NACARA also amended the Act to exempt qualified NACARA beneficiaries from the limit on the number of individuals who may be granted suspension of deportation and cancellation of removal, and adjustments of status pursuant thereto, each year.

What is suspension of deportation and special rule cancellation of removal? Both suspension of deportation and special rule cancellation of removal are forms of discretionary relief that, if granted, permit an individual subject to deportation or removal to remain in the United States. The criteria for granting such relief, in the exercise of discretion, are described in Part IV of this Supplementary Information.

If an individual is granted suspension of deportation or special rule cancellation of removal, his or her immigration status will then be adjusted to that of lawful permanent resident. Suspension of deportation is only available to eligible persons who were placed in deportation proceedings prior to April 1, 1997. Special rule cancellation of removal is available to eligible aliens who are placed in removal proceedings on or after April 1, 1997, or who have not been placed in deportation proceedings and are eligible to apply with the Service under the standards set forth in this proposed rule.

Is there a limit on the number of individuals who may be granted suspension of deportation or special rule cancellation of removal under NACARA? No. NACARA exempts individuals eligible for relief under section 203 of NACARA from the limit on the number of individuals who may be granted suspension of deportation and cancellation of removal each year. Because persons who qualify for relief under Section 203 are not subject to this annual limitation, the interim rule at 8 CFR 240.21, published on September 30, 1998, in the **Federal Register** at 63 FR 52134, does not affect their eligibility for a grant of suspension of deportation or special rule cancellation of removal.

Who can apply under this new law? Unless convicted of an aggravated felony, the following individuals may be eligible to apply for suspension of deportation or special rule cancellation of removal under section 203 of NACARA:

(1) any registered class member of *American Baptist Churches* v. *Thornburgh (ABC),* 760 F. Supp. 796 (N.D. Cal. 1991), who has not been

apprehended at the time of entry after December 19, 1990;

(2) any Guatemalan or Salvadoran national who filed an application for asylum with the Service on or before April 1, 1990; and

(3) any alien who entered the Untied States on or before December 31, 1990, filed an application for asylum on or before December 31, 1991, and at the time of filing was a national of the Soviet Union, Russia, any republic of the former Soviet Union, Latvia, Estonia, Lithuania, Poland, Czechoslovakia, Romania, Hungary, Bulgaria, Albania, East Germany, Yugoslavia, or any state of the former Yugoslavia.

In addition and regardless of nationality, the spouse, child (unmarried and under 21 years of age), unmarried son, and unmarried daughter of an individual described in any of the above three categories who is granted cancellation of removal or suspension of deportation may apply for suspension of deportation or special rule cancellation of removal under the provisions of NACARA, unless he or she has been convicted of an aggravated felony. The relationship between the spouse, child, unmarried son, or unmarried daughter and the spouse or parent granted suspension of deportation or cancellation of removal must exist at the time that the parent or spouse is granted suspension of deportation or cancellation of removal. If the alien is an unmarried son or unmarried daughter 21 years of age or older at the time the parent is granted suspension of deportation or cancellation of removal, he or she must have entered the United States on or before October 1, 1990, in order to be eligible to apply for suspension of deportation or special rule cancellation of removal under NACARA. Although a spouse, child, unmarried son, or unmarried daughter is not statutorily eligible to apply for such relief unless the ''principal'' spouse or parent has been granted suspension of deportation or cancellation of removal, applications for relief may be submitted at the same time as the ''principal'' spouse or parent submits an application, or while the ''principal'' spouse or parent's application is pending. The spouse, child, unmarried son, or unmarried daughter will be required to independently establish each of the applicable statutory criteria for suspension of deportation or special rule cancellation of removal and that he or she merits discretionary relief.

Would withdrawal of an asylum application make someone ineligible to apply under section 203 of NACARA? No, Although certain individuals are eligible to apply for relief under section 203 of NACARA based on nationality, entry date to the United States, and the filing of an asylum application by a requisite date, the statute does not require that the asylum application still be pending in order to apply for relief under NACARA.

Will there be a new procedure to apply for suspension of deportation or special rule cancellation of removal under section 203 of NACARA? Yes. To implement section 203 of NACARA efficiently and expeditiously, the Attorney General has decided to integrate the adjudication of suspension of deportation and special rule cancellation of removal applications into the affirmative asylum process. Under this proposed rule, the Attorney General will delegate to asylum officers the authority to grant suspension of deportation or special rule cancellation of removal to certain beneficiaries of NACARA who have asylum applications pending with the Service and to their qualified dependents. Under present regulations, only immigration judges, subject to review by the Board and the Attorney General, are permitted to adjudicate suspension of deportation or cancellation of removal applications within the context of deportation or removal proceedings. Given the large number of NACARA beneficiaries who presently have asylum applications pending before the Service, the Attorney General has determined that delegation of authority to the Service in this limited circumstances is the most efficient method for implementing section 203 of NACARA.

Streamlining the process by permitting eligible applicants to raise their suspensions of deportation or special rule cancellation of removal claims simultaneously with their asylum claims offers an efficient method for resolving many of these claims at an earlier stage in the administrative process. The great majority of section 203 beneficiaries are class members of the *ABC* settlement agreement who currently have asylum applications pending with the Service and are awaiting a *de novo* adjudication of their applications pursuant to the terms of the settlement agreement. Although the *ABC* class members previously placed in deportation proceedings could seek to recalendar their cases in order to apply for suspension of deportation before the Immigration Court, most class members were never placed in proceedings. Absent the proposed rule, these individuals, as well as other NACARA beneficiaries who have asylum applications pending before the Service, would be required to wait until their asylum claims had been adjudicated and, if ineligible for asylum, placed in removal proceedings before they would have an opportunity to file their applications for relief under section 203 of NACARA before the Immigration Court.

Under the proposed rule, an asylum officer will have the authority to consider and grant suspension of deportation or special rule cancellation of removal to an applicant who is clearly eligible for relief from deportation or removal, thus reducing both the time and expense incurred by the Government and the applicant in resolving the claim. Consequently, the proposed rule will implement NACARA in a manner consistent with the humanitarian concerns expressed by Congress in passing this legislation.

II. Process for Applying With the Service

Who will be able to apply with the Service for suspension of deportation or special rule cancellation of removal? The great majority of individuals who are eligible to apply for suspension of deportation or special rule cancellation of removal under NACARA will be eligible to apply for such discretionary relief with the Service. However, not all aliens covered by NACARA will be able to apply with the Service. Asylum officers' jurisdiction to consider applications for suspension of deportation or special rule cancellation of removal will be limited to certain eligible NACARA beneficiaries who have an asylum application pending with the Asylum Program and to their eligible spouses, children, unmarried sons, and unmarried daughters.

The following individuals will be permitted to apply for suspension of deportation or special rule cancellation of removal with the Service:

(1) a Guatemalan or Salvadoran national who applied for asylum with the Service on or before April 1, 1990, and whose asylum application is pending with the Service;

(2) an *ABC* class member who is eligible for benefits of the *ABC* settlement agreement and who has not yet had a *de novo* asylum adjudication with the Service, under the terms of the settlement agreement;

(3) a national of a former Soviet bloc country who meets the application eligibility criteria in section 203 of NACARA and who has an asylum application pending with the Service; and

(4) the spouse, child, unmarried son, and unmarried daughter of an

individual described in any of the preceding three categories, as long as the qualified spouse or parent has pending with the Service an application for suspension of deportation or special rule cancellation of removal or has been granted suspension of deportation or special rule cancellation of removal by the Service and, with certain exceptions, the spouse, child, unmarried son, or unmarried daughter has not been placed in immigration proceedings. To be eligible to apply for suspension of deportation or special rule cancellation of removal under NACARA, an unmarried son or unmarried daughter 21 years of age or older must have first entered the United States on or before October 1, 1990, or have been less than 21 years of age when his or her parent was granted suspension of deportation or cancellation of removal.

With respect to aliens who have been placed in deportation or removal proceedings, this proposed rule gives authority to asylum officers to consider applications for suspension of deportation or special rule cancellation of removal submitted by qualified applicants only if an immigration judge has administratively closed those proceedings or the Board has continued those proceedings because:

(1) the applicant is entitled to a *de novo* asylum adjudication pursuant to the *ABC* settlement agreement (see next section for discussion of class membership and *ABC* eligibility requirements);

(2) the applicant is an *ABC* class member with a final order of deportation who is entitled to a *de novo* asylum adjudication pursuant to the *ABC* settlement agreement, has filed and been granted a motion to reopen under section 203(c) of NACARA, pursuant to the notice published in the **Federal Register** by the Attorney General on January 21, 1998, at 63 FR 3154, or under 8 CFR 3.43 (published in the **Federal Register** on June 11, 1998, at 63 FR 31890), and has requested that the reopened proceedings be closed in order to file for suspension of deportation before the Service; or

(3) the applicant is the spouse, child, unmarried, or unmarried daughter of a NACARA beneficiary who is eligible to apply for, and has applied for, suspension of deportation or special rule cancellation of removal with the Service, and the Immigration Court or the Board has administratively closed or continued the proceedings to permit the applicant to submit an application for suspension of deportation or special rule cancellation of removal with the Service.

All other persons in deportation or removal proceedings who are eligible to apply for suspension of deportation or special rule cancellation of removal under section 203 of NACARA must apply for this relief before the Immigration Court.

To illustrate the jurisdictional divisions between the Service and EOIR over applications for relief under section 203 of NACARA, the Department is considering creating a jurisdictional chart, in table format, to be published with the interim or final rule implementing section 203 of NACARA. The Department solicits comments on whether the public believes such a jurisdictional chart would be useful, and if so, how such a chart would be organized.

Who is eligible for benefits of the ABC settlement agreement? A class member of the *ABC* settlement agreement is eligible for benefits of the agreement only if he or she registered for *ABC* benefits, applied for asylum by a specified cutoff date, has not been convicted of an aggravated felony, and has not been apprehended at the time of entry after December 19, 1990. All Guatemalan nationals who first entered the United States on or before October 1, 1990, and all Salvadoran nationals who first entered the United States on or before September 19, 1990, are class members under the *ABC* settlement agreement. Guatemalan class members were required to register for *ABC* benefits on or before December 31, 1991, and to apply for asylum on or before January 3, 1995. Salvadoran class members were required to register for *ABC* benefits on or before October 31, 1991, and to apply for asylum on or before January 31, 1996. (The Service permitted a two-week administrative grace period, extending to February 16, 1996.) A class member was not required to file a new asylum application under the settlement agreement if the applicant had already filed an asylum application with the Service or the Immigration Court prior to the applicable filing deadline.

Can an ABC class member who registered for ABC benefits, but failed to apply for asylum by the applicable filing deadline, apply for suspension of deportation or special rule cancellation of removal with the Service? No. Although NACARA allows a registered *ABC* class member to apply for suspension of deportation or special rule cancellation of removal, even if he or she failed to apply for asylum by the applicable date necessary to retain *ABC* benefits, the proposed rule requires that such an individual apply for relief under section 203 of NACARA in deportation or removal proceedings before the Immigration Court. If a registered *ABC* class member applied for asylum after the applicable *ABC* filing deadline, the Service will process the asylum application pursuant to current asylum regulations, but will not accept from the class member an application for special rule cancellation of removal. If such a class member is not granted asylum and appears to be deportable or inadmissible, the Service will initiate removal proceedings. The class member may then be eligible to apply for special rule cancellation of removal before the Immigration Court. The Service does not have jurisdiction over an asylum application filed by an *ABC* class member who was in proceedings that were previously administratively closed or continued by the Executive Office for Immigration Review (EOIR) and who missed the applicable asylum filing deadline for *ABC* benefits. In such cases, the Service will move to recalendar proceedings before EOIR, and the class member may apply for suspension of deportation in the context of the recalendared proceedings.

This restriction permits the Service to focus its resources on the adjudication of the applications filed by the registered *ABC* class members who met the filing deadlines; other Guatemalans, Salvadorans, and nationals of former Soviet bloc countries who are qualified to apply under section 203 of NACARA and whose asylum applications are pending with the Service; and the dependents of these groups. Limiting the program to registered *ABC* class members who met the requisite filing deadlines will also serve to protect the integrity of the program by reducing the possibility of fraudulent claims of *ABC* class membership and registration. Because an applicant for suspension of deportation or special rule cancellation of removal will be entitled to immediately apply for and be granted employment authorization, the Service is concerned that there would be an influx of fraudulent applications submitted solely for the purpose of obtaining employment authorization, if no restrictions are placed on the submission of applications. Consequently, to avoid creating such a problem and to avoid diverting resources from the adjudication process in order to verify the status of each new applicant claiming to be a registered *ABC* class member, the Service has chosen to limit the group of persons eligible to apply with the Service for relief from deportation or removal under section 203 of NACARA to those persons who can more readily be

identified by the their previously filed asylum applications.

Must a spouse, child, unmarried son, or unmarried daughter of a beneficiary of section 203 of NACARA have applied for asylum with the Service in order to be eligible to apply for suspension of deportation or special rule cancellation of removal with the Service? No. In the interest of preserving family unity and fostering administrative efficiency, this rule proposes to give the Service jurisdiction to grant or refer an application for suspension of deportation or special rule cancellation of removal filed by a spouse, child, unmarried son, or unmarried daughter of certain NACARA beneficiaries. The spouse, child, unmarried son, or unmarried daughter will not be required to apply for asylum with the Service in order to submit an application for discretionary relief under section 203 of NACARA, so long as the applicant's spouse or parent either has an application for relief under section 203 of NACARA pending with the Service or has been granted suspension of deportation or special rule cancellation of removal by the Service.

If the spouse, child, unmarried son, or unmarried daughter (''dependent'') is in deportation or removal proceedings, he or she appears otherwise eligible for discretionary relief under section 203 of NACARA, and the qualified parent or spouse has submitted an application for such relief with the Service, the Immigration Court may administratively close the dependent's case to permit the dependent to submit an application for suspension of deportation or special rule cancellation of removal with the Service. Similarly, the board may administratively close or continue the dependent's appeal to permit the dependent to submit an application for suspension of deportation or special rule cancellation of removal. A dependent's case that has been administratively closed or continued to allow the dependent to apply with the Service for relief under section 203 of NACARA may be recalendared by the Service if the dependent fails to file his or her application within a required period of time or if the dependent becomes clearly ineligible for relief under section 203 of NACARA prior to submitting his or her application with the Service. A dependent whose case has been administratively closed or continued by EOIR for purposes of filing an application for relief under NACARA with the Service will not be permitted to file an asylum application with the Service. Jurisdiction will remain with EOIR for all matters other than the initial adjudication of the NACARA application.

Although the Service will attempt to interview the dependent and make an eligibility determination at the same time the Service considers the applications of other family members, the application will generally be considered as a separate application for purposes of the filing fee, because it will not have been filed at the same time as the parent's or spouse's application.

When can an application be filed? Anyone who is eligible to apply for suspension of deportation or special rule cancellation of removal and who is in deportation or removal proceedings may apply for such discretionary relief before the Immigration Court in the course of those proceedings. Those who are eligible to apply with the Service will be able to apply when interim or final regulations delegating authority to the Service become effective. The Department expects to publish interim or final regulations after the notice and comment period for this proposed rule has been completed. There is no deadline for filing the application with the Service, as long as the applicant still meets the criteria for eligibility to apply with the Service.

How does one submit an application to the Service? To apply with the Service for suspension of deportation or special rule cancellation of removal under section 203 of NACARA, the applicant must submit a Form I–881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Public Law 105–100), with all attachments and supporting documents, in accordance with the instructions on that form. The Service is currently in the process of preparing the final version of proposed Form I–881. The Service will not accept applications submitted on a Form EOIR–40 or EOIR–42.

Each applicant, including all qualified dependents, must submit a separate application.

Will there be a fee? Yes. The proposed rule establishes a $215 fee for a single applicant, with a maximum family cap of $430 for a family of two or more qualified relatives who submit applications to the Service at the same time. Qualified relatives are limited to the spouse, children, unmarried sons and unmarried daughters of an applicant. A qualified relative who does not submit an application at the same time as the relative's parent or spouse will be required to pay the $215 fee. As with other applications for immigration benefits, applicants may request a fee waiver pursuant to 8 CFR 103.7(c).

The fee for applying directly with the Immigration Court in the course of deportation or removal proceedings will continue to be $100, with a single fee of $100 whenever applications are filed by two or more individuals in the same proceedings. If the application filed with the Service is referred to the Immigration Court, the applicant will not be required to pay an additional fee.

In addition to the fee required to submit an application for suspension of deportation or special rule cancellation of removal, each applicant who is required to be fingerprinted will also be required to include a fingerprinting fee (now $25), or request for fee waiver, when submitting the application to the Service, pursuant to current regulations.

Why is the fee for individuals applying with the Service higher than the fee for individuals applying with the Immigration Court? The proposed fee for individuals applying with the Service is higher, because the cost to the Service to adjudicate applications must be funded from the Immigration Examinations Fee Account (IEFA). The IEFA was established by Congress in 1989, and the revenue deposited in the account is the sole source of funding for the processing of immigration and naturalization applications and petitions, and for other purposes designated by Congress, such as the processing of asylum applications for which no fee is required. No appropriations are provided by Congress from tax dollars. In contrast, the Immigration Court receives funds appropriated by Congress to cover the costs of court functions. The $100 fee to apply for suspension of deportation or cancellation of removal in the Immigration Court partially covers the Service's costs associated with litigating such applications in deportation or removal proceedings.

How was the fee determined? The Service is authorized to charge fees for the adjudication and processing of applications and petitions for a wide variety of immigration and naturalization benefits. The fees are required to recover the cost to the Service of providing a specific immigration service. All fees must be reviewed regularly and adjusted as costs change, as more precise cost determination processes become available, or as directed by legislation. This rule proposes to establish a fee that recovers the costs to the Service associated with processing applications for suspension of deportation and special rule cancellation of removal under section 203 of NACARA.

Revenues generated from the fee proposed in this rule will be deposited

in the IEFA, which provides the sole source of funding available to the Service to process the applications. The Service conducted a cost review of its existing immigration and naturalization application and petition fees in accordance with statutory mandates and Federal cost accounting standards, using activity-based costing (ABC) methodology. ABC methodology provides an accurate and precise cost calculation. This methodology has been used successfully in the private sector and has been used increasingly by Federal agencies to determine the costs of programs, processes, products, and services. (A summary of the approach and methodology used in the review is explained in the proposed rule to adjust the fee schedule of the IEFA for 30 of the immigration adjudication and naturalization applications and petitions. The proposed rule was published in the **Federal Register** on January 12, 1998, at 63 FR 1775. The final rule was published in the **Federal Register** on August 14, 1998, at 63 FR 43604.)

Because Service adjudication of suspension of deportation and special rule cancellation of removal under section 203 of NACARA is a new process, actual historical cost data is not available for establishing a fee based upon actual experience. However, combining the information developed in the IEFA cost review with expert knowledge, it was determined that the application process activities for the Form I–485, Application to Register Permanent Residence or Adjust Status, and the Form I–589, Application for Asylum and for Withholding of Removal, closely resemble the processing and adjudication of a suspension of deportation or special rule cancellation of removal application. Using data from the IEFA cost review, an activity and associated cost model was constructed to anticipate the actual costs of the new process. Integrating the applicable activity costs from the IEFA fee study, the Service calculated a fee of $215 for a single applicant. The maximum amount being proposed for families (as a family cap) is $430.

Must the applicant be fingerprinted? Yes. Each applicant 14 years or older must be fingerprinted. Under current regulations, a fingerprinting fee (now $25), or request for fee waiver, must be submitted to the Service for each person who requires fingerprinting in order to apply for a benefit. An applicant who has previously submitted fingerprints for an asylum application must be fingerprinted again to fulfill current requirements for suspension of deportation or special rule cancellation of removal. The fingerprints will ordinarily be taken at an Application Support Center or a designated Law Enforcement Agency. For cases before the Service, after an application has been submitted, the applicant will be notified in writing of the appointment date and the location of the Application Support Center or designated Law Enforcement Agency where the applicant must go to be fingerprinted. The Service may not conduct an interview until the applicant has been fingerprinted and the Service has received a definitive response from the Federal Bureau of Investigation (FBI) that a full criminal background check has been completed. An applicant's unexcused failure to appear for fingerprinting may result in dismissal of the application for suspension of deportation or special rule cancellation of removal or referral of the application to the Immigration Court. For applications submitted to the Immigration Court, the applicant should proceed as directed by the immigration judge.

How will the interview process before the Service work and what should the applicant bring to the interview? Each applicant will be notified by the Asylum Office of the date, time, and place (address) of a scheduled interview. The Service recommends that each applicant bring a copy of the application and originals of any supporting documents to the interview. Any documents submitted that are written in a foreign language must be accompanied by a certified translation pursuant to 8 CFR 103.2(b)(3). The applicant should also bring some form of identification, if available, including any passport(s), other travel or identification documents, or Form I–94, Arrival-Departure Record.

An asylum officer shall conduct a nonadversarial interview to elicit information relating to eligibility for both asylum and for suspension of deportation or special rule cancellation of removal, if the applicant has applied for both forms of relief.

The applicant has the right to legal representation at the interview, at no cost to the United States Government. Any attorney or representative of record who is representing an applicant must file a G–28, Notice of Entry of Appearance as Attorney or Representative, signed by the applicant.

If the applicant is unable to proceed with the interview in fluent English, he or she must provide, at no expense to the Service, a competent interpreter fluent in both English and a language that the applicant speaks fluently. The interpreter must be at least 18 years of age. The following persons cannot serve as interpreter: the attorney or representative of record or a witness testifying on the applicant's behalf at the interview. If the applicant also has an asylum application pending with the Service, a representative or employee of the applicant's country of nationality, or, if stateless, country of last habitual residence, may not serve as an interpreter. Failure without good cause to bring a competent interpreter to the interview may be considered an unexcused failure to appear for the interview, which may result in dismissal of the application or referral of the application to the Immigration Court.

In most cases, the applicant will be given a notice to return to the Asylum Office for service of the decision and, where appropriate, charging documents placing the person in removal proceedings (the ''pick-up''). Each applicant will also be advised of the requirement to bring an interpreter to the pick-up if the applicant is not fluent in English. An applicant who is not fluent in English must bring an interpreter to the ''pick-up,'' because the applicant may be asked at that time to admit inadmissibility or deportability, and may also be asked whether he or she intends to continue to pursue a pending application for asylum before the Service, if suspension of deportation or special rule cancellation of removal is granted. Although a grant of suspension of deportation or cancellation of removal will confer lawful permanent resident status, section 208 of the Act provides that an alien who is physically present in the United States, or who arrives in the United States, may apply for asylum irrespective of the alien's status.

Must the applicant concede inadmissibility or deportability in order to be granted suspension of deportation or special rule cancellation of removal by the Service? Yes. NACARA provides that the Attorney General may grant suspension of deportation to a qualified individual who is deportable from the United States or special rule cancellation of removal to a qualified alien who is inadmissible or deportable from the United States. The Department has determined that, before suspension of deportation or cancellation of removal may be granted, there must be a finding of inadmissibility or deportability. Because asylum officers are not authorized to make determinations regarding inadmissibility or deportability in most contexts, applicants for suspension of deportation or special rule cancellation of removal before the Service will be required to concede inadmissibility or

deportability before the Service may grant the relief from deportation or removal to the applicant. The instructions for the application will advise the applicant of this requirement. If an asylum officer determines that the applicant is eligible for suspension of deportation or special rule cancellation of removal, the applicant will be informed of the preliminary decision and asked to sign a written concession of inadmissibility or deportability before the final decision is issued. If the applicant declines to admit inadmissibility or deportability and is not granted asylum, the applicant will be placed in immigration proceedings and the application for suspension of deportation or special rule cancellation of removal will be referred to the Immigration Court.

What if an applicant does not appear for the scheduled interview with an asylum officer? An applicant who cannot appear for the scheduled interview should submit prior to the interview a written request to reschedule the interview, explaining the reasons the applicant cannot attend the interview. An unexcused failure to appear for the interview may result in dismissal of the application for suspension of deportation or special rule cancellation of removal or referral of the application to the Immigration Court.

III. Process for applying with EOIR

How does one apply for suspension of deportation or special rule cancellation of removal before the Immigration Court? A person eligible to apply for suspension of deportation or special rule cancellation of removal under section 203 of NACARA who is presently in deportation or removal proceedings should follow the procedures for submitting an application under the regulations and as directed by the immigration judge. The Immigration Court is already adjudicating applications under section 203 of NACARA; there is no need for those who are in proceedings to wait for publication of an interim or final version of this proposed rule to submit an application to the Immigration Court. However, persons who apply for suspension of deportation or special rule cancellation of removal under section 203 of NACARA after this proposed rule is issued as an interim or final rule, will be required to submit their applications on Form I–881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Public Law 105–100), with all attachments and supporting documents, in accordance with the instructions for that form. Each applicant must submit a separate application.

What if a person who is eligible to apply for special rule cancellation of removal is not in proceedings and either does not have an asylum application pending or filed for asylum after the applicable filing deadline? Under this proposed rule, a person who is not in proceedings and who is ineligible to apply with the Service for discretionary relief under section 203 of NACARA will not be permitted to submit an application unless and until he or she is placed in removal proceedings. Under section 203 of NACARA, there is no deadline for filing an application for special rule cancellation of removal. The decision to place an alien in proceedings lies solely with the discretion of the Service.

IV. Eligibility for Suspension of Deportation and Special Rule Cancellation of Removal

What are the applicable statutory provisions? Statutory eligibility for suspension of deportation will be determined based on the criteria governing continuous physical presence, good moral character, and extreme hardship set forth in paragraph, (a) and (b) of former section 244 of the Act, as in effect prior to April 1, 1997, and, as discussed below, subject to applicable bars to discretionary relief as provided in the Act, as in effect prior to April 1, 1997. However, persons eligible to apply for suspension of deportation under section 203 of the NACARA are exempted from the transitional rule governing continuous physical presence contained in section 309(c)(5) of IIRIRA. This means that such applicants are exempt from 240A(d)(1) of the Act, as amended by IIRIRA, which affects the determination of when time counted toward continuous physical presence in the United States stops accruing (the ''stop-time'' rule). Specifically, section 240A(d)(1) of the Act, as amended by IIRIRA, provides that time counted toward physical presence in the United States stops accruing when a person is served a notice to appear under section 239(c) of the Act or commits an offense referred to in section 212(a)(2) of the Act that renders the person inadmissible to the United States under section 212(a)(2) or removable from the United States under section 237(a)(2) or 237(a)(4) of the Act, whichever is earlier. Such persons are also exempt from section 240A(d)(2), which addresses breaks in presence in the United States.

Applications for special rule cancellation of removal under section 203 of NACARA are governed by statutory eligibility requirements contained in section 309(f)(1) of IIRIRA, as amended by NACARA. These requirements correspond, with certain exceptions, to the requirements contained in former section 244(a)(1) and (a)(2) of the Act, as in effect prior to April 1, 1997. Applications under section 203 of NACARA are otherwise subject to the provisions of section 240A of the Act, with the exception of sections 240A(b)(1) (the heightened standards relating to eligibility), (d)(1) (the ''stop-time rule''), and (e) (limitations on the annual number of individuals granted relief).

Additionally, to be eligible for suspension of deportation or special rule cancellation of removal, the alien must not be subject to any of the statutory bars to seeking such relief. Section 244(f) of the Act, as it existed prior to April 1, 1997, and section 240A(c) of the Act provide that certain categories of aliens (crewmen and certain non-immigrant exchange aliens) are ineligible for suspension of deportation or cancellation of removal. Pursuant to former section 242B(e)(2) of the Act, as in effect prior to April 1, 1997, and section 240B(d) of the Act, an alien who was previously granted voluntary departure and received notice of the consequences of failing to depart, but did not depart the United States within the time specified, is barred for a specific period of time from various forms of discretionary relief, including suspension of deportation and cancellation of removal. Similarly, former sections 242B(e)(1), (3) and (4) of the Act, as in effect prior to April 1, 1997, preclude the Attorney General from granting suspension of deportation to aliens who, under certain circumstances, fail at appear to a deportation or asylum hearing, or as ordered for deportation. Applicants for special rule cancellation of removal are subject, where applicable, to the bar to discretionary relief contained in section 240(b)(7) of the Act, relating to failure to appear at removal proceedings. The Attorney General has no authority to waive such bars in the cases in which they apply.

What are the requirements for establishing eligibility? The burden is on the applicant to establish that he or she meets each of the statutory requirements for the relief sought and that he or she is entitled to relief from deportation or removal as a matter of discretion. As explained further below, the general requirements for eligibility relate to the amount of time the applicant has been

continuously physically present in the United States, whether the applicant is and has been of good moral character during the requisite period of continuous physical presence, and the degree of hardship to the applicant or qualified relative resulting from removal. There are two basic standards both for eligibility for suspension of deportation and for special rule cancellation of removal, and the applicable standard is determined by the grounds of deportability or inadmissibility that apply. Aliens who are inadmissible or deportable on certain criminal or other grounds are subject to a higher standard that requires the applicant to establish a longer period of continuous physical presence and a higher degree of hardship resulting from removal. In addition, special eligibility provisions may apply to certain individuals who have been battered or subject to extreme cruelty, or whose children have been subject to such abuse, and to certain individuals who have served in the United States Armed Forces.

To be eligible for suspension of deportation under the general standard set forth in former section 244(a)(1) of the Act, as in effect prior to April 1, 1997, an applicant must not have been convicted of an aggravated felony, must not be deportable for having participated in Nazi persecution or in genocide, and must be deportable under any law of the United States other than paragraph (a)(2) (criminal grounds), paragraph (3) (failure to register and falsification of documents), or paragraph (4) (security and related grounds) of the former section 241(a) of the Act, as in effect prior to April 1, 1997. To be eligible for special rule cancellation of removal under the general standard set forth in section 309(f)(1)(A) of IIRIRA, as amended by NACARA, an applicant must not be inadmissible to the United States under paragraph (2) (criminal and related grounds) or paragraph (3) (security and related grounds) of section 212(a) of the Act, or deportable under paragraph (2) (criminal grounds), paragraph (3) (failure to register and falsification of documents), or paragraph (4) (security and related grounds) of section 237(a) of Act, and may not be an alien who has been convicted of an aggravated felony or has been to be a persecutor.

An applicant for either form of relief who meets the foregoing eligibility requirements must also establish that:

(1) the applicant has been physically present in the United States continuously for at least 7 years before applying for the relief;

(2) the applicant is and has been a person of good moral character during those 7 years of physical presence; and

(3) removal from the United States would result in extreme hardship to the applicant, or to the applicant's spouse, parent, or child, who is a United States citizen or alien lawfully admitted for permanent residence.

The applicant must also establish that the applicant merits relief as a matter of discretion.

Generally, persons who are inadmissible or deportable on the basis of the grounds previously described (other than those who have been convicted of an aggravated felony or involved in the persecution of others) may still be eligible for suspension of deportation under former section 244(a)(2) of the Act, as in effect prior to April 1, 1997, or for special rule cancellation of removal under section 309(f)(1)(B) of IIRIRA, as amended by NACARA, under a higher standard. To be eligible under the higher standard, the applicant must establish that:

(1) the applicant has been physically present in the United States continuously for not less than 10 years immediately following the commission of an act, or the assumption of a status, constituting a ground for deportation or removal;

(2) the applicant is and has been a person of good moral character during that period; and

(3) deportation or removal would result in exceptional and extremely unusual hardship to the applicant or to the applicant's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence. The applicant must also establish that the applicant merits relief as a matter of discretion.

What factors are considered in evaluating continuous physical presence? For persons covered by section 203 of NACARA who are presently in deportation proceedings, the primary impact of NACARA is the elimination of the transitional rules contained in section 309(c)(5) of IIRIRA relating to the ''stop-time'' rule and certain breaks in presence. A person eligible to apply for suspension of deportation under NACARA must establish the required period of continuous physical presence by the date on which the application is filed. A person who is already subject to a final order of deportation and must reopen his or her proceedings under 8 CFR 3.43 must establish the required period of physical presence by no later than September 11, 1998, regardless of the date on which service of the charging document was completed.

The proposed rule repeats the statutory requirement that an applicant for suspension of deportation must establish that any break in continuous physical presence was brief, casual, and innocent, and did not meaningfully interrupt the applicant's period of continuous physical presence in the United States. The proposed rule also reflects conclusions set forth in case law that departures under an order of deportation, departures under an order of voluntary departure, or departures during which the applicant formed the intent to commit a crime meaningfully interrupt continuous physical presence.

Although applicants for special rule cancellation of removal are exempt from the ''stop-time'' provision of section 240A(d)(1) of the Act, they are not exempt from section 240A(d)(2) of the Act, relating to breaks in continuous physical presence. Under section 309(f)(2) of IIRIRA, as amended by section 203(b) of NACARA, an applicant for special rule cancellation of removal will be considered to have failed to maintain continuous physical presence in the United States if he or she is absent from the United States for any period in excess of 90 days or for any periods that in the aggregate exceed 180 days. The proposed rule specifies that periods of shorter duration may be found to terminate continuous physical presence if the absence is a meaningful interruption.

What factors are considered in evaluating good moral character? To be eligible for suspension of deportation or special rule cancellation of removal, the person will have to establish good moral character during the requisite period of continuous physical presence in the United States. Good moral character is decided on a case-by-case basis, taking into account the provisions of section 101(f) of the Act, which identify reasons a person cannot be found to be of good moral character, and precedent decisions by the Board and Federal courts.

What factors are considered in evaluating extreme hardship? An applicant for suspension of deportation under former section 244(a)(1) of the Act, as in effect prior to April 1, 1997, or special rule cancellation of removal under section 309(f)(1)(A) of IIRIRA, as amended by section 203 of NACARA, must establish that his or her deportation or removal would result in extreme hardship to the applicant, or to a parent, child or spouse who is a United States citizen or lawful permanent resident alien. In adopting the same standards for special rule cancellation of removal as were required for suspension of deportation under

former section 244(a)(1) of the Act, prior to amendments by IIRIRA, Congress appears to have intended the same standard for extreme hardship to apply to both forms of relief. The phrase ''extreme hardship'' is not defined in the Act, and NACARA provides no additional guidelines for interpretation of this requirement. Instead, ''extreme hardship'' has acquired specific legal meaning through interpretation by the Board and Federal courts.

The Board has not set forth a bright line test for determining ''extreme hardship,'' finding that ''extreme hardship'' within the meaning of section 244(a)(1) of the Act ''is not a definable term of fixed and inflexible content or meaning. It necessarily depends upon the facts and circumstances peculiar to each case.'' *Matter of Hwang,* 10 I & N Dec. 448, 451 (BIA 1964). Over time, however, precedent decisions issued by the Board and federal courts have created a body of case law that has provided a framework for analyzing claims of extreme hardship. *See Matter of Anderson,* 16 I & N Dec. 596 (BIA 1978); *Matter of Ige,* 20 I & N Dec. 880 (BIA 1994); *Matter of O–J–O),* Int. Dec. #3280 (BIA 1996); *Matter of L–O–G, Int Dec.* #3281 (BIA 1996); *Matter of Pilch,* Int. Dec. #3298 (BIA 1996). In these decisions and others, the Board has enumerated a series of factors that are relevant to a determination of extreme hardship. These precedent decisions are binding on the Service and EOIR.

Under this proposed rule, asylum officers will be required to consider suspension of deportation and special rule cancellation of removal applications under the same legal standards that govern adjudication by the Immigration Court. Because of the breadth of the case law governing the ''extreme hardship'' standard, the Department has concluded that a regulatory compilation of the relevant factors and standards identified within this body of law would provide a more uniform and focused source for evaluating extreme hardship claims. This proposed rule is not intended, however, to overturn or modify existing case law. Nor does it intend to limit the development through case law of other relevant factors. Instead, codification is intended to assist adjudicators, attorneys, and applicants to identify factors that may be relevant to an extreme hardship determination in the context of an application for suspension of deportation or special rule cancellation of removal. This regulation, however, does not codify the higher standard of ''exceptional and extremely unusual hardship'' required under former section 244(a)(2) of the Act, as in effect prior to April 1, 1997, section 240A(b)(1) of the Act for persons seeking cancellation of removal, or section 309(f)(1)(B) of IIRIRA, as amended by NACARA, for persons seeking special rule cancellation of removal.

This proposed rule maintains the flexibility of the existing standard by identifying broad factors that have been cited in existing precedent decisions as relevant to the evaluation of whether deportation would result in extreme hardship to the alien or to his or her qualified relative. These factors are (1) the age of the alien, both at the time of entry to the United States and at the time of application for suspension of deportation; (2) the age, number, and immigration status of the alien's children and their ability to speak the native language and adjust to life in another country; (3) the health condition of the alien or the alien's child, spouse, or parent and the availability of any required medical treatment in the country to which the alien would be returned; (4) the alien's ability to obtain employment in the country to which the alien would be returned; (5) the length of residence in the United States; (6) the existence of other family members who will be legally residing in the United States; (7) the financial impact of the alien's departure; (8) the impact of a disruption of educational opportunities; (9) the psychological impact of the alien's deportation or removal; (10) the current political and economic conditions in the country to which the alien would be returned; (11) family and other ties to the country to which the alien would be returned; (12) contributions to and ties to a community in the United States, including the degree of integration into society; (13) immigration history, including authorized residence in the United States; and (14) the availability of other means of adjusting to permanent resident status.

Ultimately, ''extreme hardship'' must be evaluated on a case-by-case basis after a review of all the circumstances in the case, and none of the listed factors alone, or taken together, automatically establishes a claim of extreme hardship. Nor is the list exhaustive, as there may be other factors relevant to the issue of extreme hardship in a particular case. The listed factors should not preclude consideration of other factors raised by an applicant, nor is an applicant required to show that each of the listed factors applies in the applicant's case, in order to establish extreme hardship. Conversely, an adjudicator is not required to consider factors that have not been raised in making an extreme hardship determination.

Generally, no single factor will be dispositive in making an extreme hardship determination. *Matter of Anderson,* 16 I & N Dec. 596. To establish extreme hardship, an applicant must demonstrate that deportation or removal would result in a degree of hardship beyond that typically associated with deportation or removal. For example, extreme hardship requires more than the mere economic deprivation that might result from an alien's deportation from the United States. *Davidson* v. *INS,* 558 F.2d 1361, 1363 (9th Cir. 1977), and *Matter of Sipus,* 14 I & N Dec. 229, 231 (BIA 1972). Loss of a job and the concomitant financial loss is not synonymous with extreme hardship. *Matter of Pilch,* Int. Dec. #3298. Similarly, readjustment to life in the native country after having spent a number of years in the United States is not the type of hardship that has been characterized as extreme, since most aliens who have spent time abroad suffer this kind of hardship. *Matter of Chumpitazi,* 16 I & N 629 (BIA 1978). The birth of a United States citizen child does not in itself provide a basis for a finding of extreme hardship. *Davidson* v. *INS,* 558 F.2d at 1363; *Matter of Kim,* 15 I & N Dec. 88 (BIA 1974). Nor does a significant reduction in one's standard of living or inability to pursue one's profession, in itself, compel a finding of extreme hardship. *Matter of Pilch,* Int. Dec. #3298.

The Board has also found that ''a claim of persecution may not generally be presented as a means of demonstrating extreme hardship, for purposes of suspension of deportation.'' *Matter of L–O–G,* Int. Dec. #3281. In those cases in which a claim of persecution is raised, however, it must be examined from the perspective of extreme hardship, rather than on the basis of the criteria used to identify a refugee under asylum law. *Ordonez* v. *INS,* 137 F.3d 1120, 1123 (9th Cir. 1998). Consequently, issues such as the circumstances under which an individual left his or her country or the political consequences of such a return may be relevant to the discussion of listed factors such as the psychological impact of deportation or removal, current country conditions, immigration history, or remaining ties to the country of deportation or removal. *See Matter of O–J–O,* Int. Dec. #3280 (family's history of conflict with Sandinistas factored into evaluation of effect of current country conditions).

Thus, a factor that may not in itself be determinative may become significant, or even critical, when weighed with all

the other circumstances and factors presented. *Matter of L–O–G,* Int. Dec. #328. Relevant factors that may not be considered extreme in themselves must be considered in the aggregate to determine whether extreme hardship exists. *Matter of Ige,* 20 I & N Dec. at 882. ''In all cases, the particular degree of personal hardship resulting from each of the factors must be taken into account.'' *Matter of L–O–G,* Int. Dec. #328. Similarly, an adjudicator should not discount the effect of a factor simply because it is not unique to the individual. The Board has noted that the ''word 'extreme' should not be equated with 'unique' and hardship for suspension purposes need not be unique to be extreme.'' *Id.*

V. Adjudication by the Service

How will a decision be made if a person has applied for both asylum and suspension of deportation or special rule cancellation of removal? An asylum officer will determine eligibility for suspension of deportation or special rule cancellation of removal concurrently with the determination of eligibility for asylum if an applicant who is eligible to apply with the Service under NACARA has applied for both forms of relief. After considering the information and documents submitted by the applicant, the testimony of the applicant and any witnesses presented at the interview, relevant country conditions information, and other information available to the asylum officer, the asylum officer will determine whether the applicant is eligible for suspension of deportation or special rule cancellation of removal or asylum. The Service will grant suspension of deportation or special rule cancellation of removal if the applicant is clearly eligible for the relief sought. If the Service finds that the applicant is not clearly eligible for suspension of deportation or special rule cancellation of removal and is ineligible for asylum, the asylum officer will refer the application for suspension of deportation or special rule cancellation of removal to the Immigration Court (or dismiss the application without prejudice, if the applicant is in valid non-immigrant or immigrant status). The Service will also process the asylum application under the terms of the settlement agreement for eligible *ABC* class members or under 8 CFR 208.14 for all other NACARA beneficiaries.

When will the Service refer an application to the Immigration Court? Under the proposed rule, asylum officers will not have the authority to deny an application for suspension of deportation or special rule cancellation of removal. Instead, an asylum officer will refer an application to the Immigration Court, if the applicant appears to be inadmissible or deportable and any of the following circumstances apply:

(1) The applicant appears to be statutorily ineligible for the relief sought;

(2) It appears that relief should be denied as a matter of discretion;

(3) The applicant appears to be eligible for relief only under the higher standards set forth in former section 244(a)(2) of the Act, as in effect prior to April 1, 1997, or section 309(f)(1)(B) of IIRIRA, as amended by NACARA (requiring, among other things, 10 years continuous physical presence and a showing of exceptional and extremely unusual hardship resulting from removal);

(4) The applicant appears eligible for relief only under the provisions that apply to battered spouses and children in former section 244(a)(3) of the Act, as in effect prior to April 1, 1997, or section 240A(b)(2) of the Act;

(5) The applicant declines to concede inadmissibility or deportability; or

(6) The applicant fails to appear for an interview or for a fingerprint appointment, and such failure to appear is unexcused. In the case of an unexcused failure to appear for an interview or for fingerprinting, the Service may refer the application to the Immigration Court without conducting an interview, or the Service may dismiss the application.

Generally, referrals to the Immigration Court will occur after the Service has evaluated the application and determined that the applicant is not clearly eligible for suspension of deportation or special rule cancellation of removal. In the case of applicants who are only eligible under the higher standard for either form of relief, referral is necessary to avoid complex determinations regarding admissibility or deportability that are more appropriately made by an immigration judge. Other grounds for referral are related to administrative efficiency and parallel provisions in 8 CFR part 208 with respect to the referral of asylum applications.

What happens if the Service finds that the applicant is eligible for suspension of deportation or special rule cancellation of removal, but is not eligible for asylum? If the Service determines that the applicant is eligible for a grant of suspension of deportation or special rule cancellation of removal by the Service and makes a preliminary determination that the applicant is not eligible for asylum, The Service will grant the applicant suspension of deportation or special rule cancellation of removal and adjust the applicant's status to that of lawful permanent resident. When the Services notifies the applicant of the decision to grant suspension of deportation or special rule cancellation of removal, the Service will notify the applicant that the Service has made a preliminary determination that the applicant is not eligible for asylum, but that the applicant has the right to continue to pursue the request for asylum. At the same time, the Service will give the applicant the opportunity to request to pursue the asylum application or to request in writing to withdraw the asylum application. If the applicant requests in writing to withdraw the asylum application, the application will be dismissed without prejudice. If the applicant wishes to pursue the asylum application and the applicant is eligible for *ABC* benefits, the Service will send the applicant a Notice of Intent to Deny the asylum application and provide an opportunity to rebut the Notice of Intent to Deny pursuant to the terms of the settlement agreement. If the applicant is not eligible for *ABC* benefits and wishes to pursue the asylum application, the Service will send the applicant a Notice of Intent to Deny in accordance with current asylum procedures for applicants who are in valid immigration status.

What happens if the Service determines that the applicant is eligible for both suspension of deportation or special rule cancellation of removal and for asylum? If the asylum officer determines that the applicant is eligible for both asylum and a grant of suspension of deportation or special rule cancellation of removal by the Service, the Service will grant the applicant suspension of deportation or special rule cancellation of removal and adjust his or her status to that of lawful permanent resident. After the Service has adjusted the applicant's status to that of lawful permanent resident, the applicant will still be eligible for asylum. Section 208 of the Act provides that an alien who is physically present in the United States, or who arrives in the United States, may apply for asylum irrespective of the alien's status. Therefore, if an asylum officer has found that the applicant is eligible for asylum, the Service will grant the applicant's asylum application.

What happens if the Service finds that the applicant is eligible for asylum, but not suspension of deportation or special rule cancellation of removal? If the Service determines that the applicant is

eligible for asylum, but appears ineligible for suspension of deportation or special rule cancellation of removal, the Service will grant the application for asylum and dismiss the application for suspension of deportation or special rule cancellation of removal without prejudice.

What happens if the Service finds that the applicant is ineligible for asylum, suspension of deportation, or special rule cancellation of removal? If the Service determines that the applicant is not eligible for a grant of asylum, suspension of deportation, or special rule cancellation of removal by the Service, and the applicant is not in valid immigrant or non-immigrant status, the Service will place the applicant in removal proceedings or move to recalendar or resume proceedings before EOIR if such proceedings were administratively closed or continued. The Service will refer the application for suspension of deportation or special rule cancellation of removal to the Immigration Court or, if proceedings before the Board and been administratively closed or continued, to the Board. The asylum application filed with the Service will also be referred to the Immigration Court, if the application is governed by current asylum regulations. The application for asylum will be denied, if the application is governed by the *ABC* settlement agreement.

What happens to a pending asylum application if the Service adjusts the applicant's status to that of lawful permanent resident? Some asylum applicants may be eligible to adjust their status to lawful permanent resident through means other than section 203 of NACARA. For example, Nicaraguans and Cubans who have adjusted status under section 202 of NACARA may no longer wish to seek asylum in the United States. To avoid unnecessary scheduling of such persons for asylum interviews and unnecessary adjudications, the Service may notify the applicant that it intends to dismiss without prejudice the asylum application unless the applicant notifies the Service in writing within 30 days of the date of the notice that the applicant would like to pursue the asylum request.

The process for adjudicating eligible *ABC* class members' asylum applications is governed by the *ABC* settlement agreement and the 1990 asylum regulations. Accordingly, this provision does not apply to them, and the Service will not presume their applications abandoned. However, if the Service grants an eligible *ABC* class member suspension of deportation or special rule cancellation of removal and makes a preliminary determination that the class member is not eligible for asylum, the Service may notify the class member of the negative preliminary assessment regarding asylum eligibility and give the class member the opportunity to withdraw the asylum request.

How will an application be processed if the applicant was in proceedings in Immigration Court that were administratively closed under the ABC settlement agreement? Pursuant to the *ABC* settlement agreement, EOIR already has administratively closed proceedings for *ABC* class members who were in proceedings before the Immigration Court. This action was taken to afford the class members the opportunity to pursue a *de novo* asylum adjudication with the Service. Because these class members were in deportation proceedings prior to April 1, 1997, they may be eligible to apply for suspension of deportation. If the Service grants either asylum or suspension of deportation to a registered *ABC* class member whose proceedings with the Immigration Court were administratively closed, such grant of asylum or suspension of deportation will terminate those proceedings under this regulation. (The Department currently is engaged in efforts to clarify language in the *ABC* settlement agreement in accordance with this proposal for automatic termination of proceedings before EOIR upon a grant of asylum). If the Service denies asylum to a registered *ABC* class member whose previous proceedings were administratively closed and the asylum officer determines that the applicant is not clearly eligible for suspension of deportation, the Service will move to recalendar proceedings before the Immigration Court, pursuant to the settlement agreement. At the same time, the Service will refer to the Immigration Court the application for suspension of deportation.

How will applications be processed for applicants who have an appeal pending with the Board of Immigration Appeals, which was continued under the ABC settlement? Pursuant to the *ABC* settlement agreement, the Board stayed or continued indefinitely appeals that had been filed by *ABC* class members in order to give them the opportunity to pursue the benefits of the settlement agreement. If the Service grants either asylum or suspension of deportation to a registered *ABC* class member whose proceedings with the Board were administratively closed or continued, such grant of asylum or suspension of deportation will terminate those proceedings under this regulation. (As noted above, the Department currently is engaged in efforts to clarify language in the *ABC* settlement agreement in accordance with this proposal for automatic termination of proceedings before EOIR upon a grant of asylum.) If the Service denies asylum to an eligible *ABC* class member and does not grant suspension of deportation, the Board shall resume proceedings upon notice from the Service, under the terms of the *ABC* settlement agreement. The Service will refer the application for suspension of deportation to the Board. The Board will remand proceedings to the immigration judge solely for adjudication of the application for suspension of deportation unless the eligible *ABC* class member also moves for, and is granted, a remand of the asylum application pursuant to the terms of the *ABC* settlement agreement.

How will applications be processed for class members eligible for ABC benefits who have been issued a final order of deportation? Section 203(c) of NACARA permits eligible NACARA beneficiaries with final orders to file a motion to reopen in order to pursue suspension of deportation or special rule cancellation of removal under NACARA. Section 203(c) requires that all NACARA beneficiaries who are under final orders of deportation, including *ABC* class members, must have filed a motion to reopen no later than September 11, 1998, in order to obtain relief under section 203 of NACARA. (The applicable rule, 8 CFR 3.43, was published in the **Federal Register** on June 11, 1998, at 63 FR 31890.)

An *ABC* class member who has been issued a final order, but currently has an asylum application pending before the Service, may file an application for suspension of deportation with the Service only if he or she has filed a motion to reopen with EOIR, and the motion has been granted. Unless the case is reopened, the alien will remain subject to the order of deportation, which will be enforceable if the alien is denied asylum under the terms of the *ABC* settlement agreement. If the motion is granted, the *ABC* class member may move to have his or her deportation proceedings administratively closed in order to apply for suspension of deportation with the Service. As is the case for all NACARA beneficiaries with final orders, eligible *ABC* class members who have challenged their immigration proceedings in Federal court must file and be granted a motion to reopen by EOIR in order to seek relief under section 203 of NACARA. If the applicant

has pending in Federal court a case that was stayed so that the applicant could pursue *ABC* benefits, the Government will wait until the application for suspension of deportation is adjudicated before requesting that court proceedings be resumed or dismissed.

All motions to reopen under section 203(c) of NACARA must have been filed on or before September 11, 1998. Therefore, any alien who did not file a motion to reopen by that date is no longer eligible to file a motion to reopen proceedings under section 203(c) of NACARA.

Employment Authorization

Are applicants for suspension of deportation or special rule cancellation of removal eligible for employment authorization? Yes. Under current regulations, applicants for suspension of deportation or cancellation of removal are eligible to apply for and be granted employment authorization. 8 CFR 274a.12(c)(10). Applicants for suspension of deportation or special rule cancellation of removal under section 203 of NACARA will also be eligible to apply for and be granted employment authorization under this provision at the time of filing an application with the Service or EOIR.

Travel Outside the United States

Is an applicant permitted to travel outside the United States while an application for suspension of deportation or special rule cancellation of removal is pending? Applicants for suspension of deportation or special rule cancellation of removal under NACARA are subject to present rules and procedures governing advance parole. Nothing in NACARA authorizes travel outside the United States for beneficiaries. Those NACARA beneficiaries who leave the country without first obtaining advance parole and who are inadmissible under section 212(a)(C) or 212(a)(7) may be subject on their return to expedited removal under section 235(b) of the Act.

NACARA beneficiaries who leave the country and are paroled back in will no longer be eligible for suspension of deportation since they would be inadmissible to the United States, rather than deportable from the United States.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant impact on a substantial number of small entities because of the following reason: This rule would provide new administrative procedures for the Service to consider applications from certain Guatemalans, Salvadorans, nationals of former Soviet Bloc countries, and their qualified relatives who are applying for suspension of deportation or special rule cancellation of removal and, if granted, to adjust their status to that of lawful permanent resident. It will have no effect on small entities, as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. § 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice to be a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Executive Order 12612

The regulation adopted herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibility among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988—Civil Justice Reform

This proposed rule meets the applicable standards set forth in sections 3(a) and (3)(b)(2) of Executive Order 12988.

Paperwork Reduction Act

This rule requires applicants to provide biographical data and information regarding eligibility for relief under section 203 of NACARA on an application form (Form I–881). This requirement is considered an information collection that is subject to review by OMB under the Paperwork Reduction Act of 1995. The Service issued a 60-day notice in the **Federal Register** on May 8, 1998, at 63 FR 25523, requesting comments on this new information collection. No comments were received during that initial 60-day comment period. On July 23, 1998, the Service issued a notice in the **Federal Register**, at 63 FR 39596, extending the comment period by 30 days. Comments were received and considered, and certain changes made to the proposed Form I–881 in light of those comments.

The Service solicits additional public comments on the information collection requirements in order to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In calculating the overall burden this requirement will place upon the public, the Service estimates that no more than 100,000 individuals will apply for relief under section 203 of NACARA in any single year. The Service also estimates that it will take each applicant approximately 12 hours to comply with the information collection requirement. This amounts to 1,200,000 total burden hours, which equates to an annual cost to the public of $33.5 million a year.

The following is the formula for determining the cost to the public: (100,000 respondents × $215 application fee = $21,500,000)+(100,000 respondents × 12 hours per response × $10+$12,000,000)=$33,500,000.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Stuart Shapiro, Desk Officer for the Immigration and Naturalization Service.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, (202) 514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536.

As required by section 3507(d) of the Paperwork Reduction Act of 1995, the Service has submitted a copy of the Form I–881 and this proposed rule to OMB for its review of the information collection requirements. OMB is required to make a decision concerning the collection of information contained in the proposed regulation between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Service on the proposed regulation.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 240

Administrative practice and procedure, Immigration.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a, 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. In § 103.1, the last sentence in paragraph (g)(3)(ii) is revised to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(g) * * *

(3) * * *

(ii) *Asylum officers.* * * * Asylum officers are delegated the authority to hear and adjudicate credible fear of persecution determinations under section 235(b)(1)(B) of the Act, applications for asylum and for withholding of removal, as provided under 8 CFR part 208, and applications for suspension of deportation and special rule cancellation of removal, as provided under 8 CFR part 240, subpart H.

* * * * *

3. In § 103.7, paragraph (b)(1) is amended by adding the entry for ''Form I–881'' to the listing of fees, in proper numerical sequence, to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

* * * * *

Form I–881. For filing an application for suspension of deportation or special rule cancellation of removal (pursuant to section 203 of Public Law 105–100):

—$215 for adjudication by the Service, except that the maximum amount payable by family members (related as husband, wife, unmarried child under 21, unmarried son, or unmarried daughter) who submit applications of the same time shall be $430.

—$100 for adjudication by the Immigration Court (a single fee of $100 will be charged whenever applications are filed by two or more aliens in the same proceedings). The $100 fee is not required if the Form 1–881 is referred to the Immigration Court by the Service.

* * * * *

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

4. The authority citation for part 208 continues to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1282, 8 CFR part 2.

5. Section 208.14 is amended by revising the section heading and by adding a new paragraph (f), to read as follows:

§ 208.14 Approval, denial, referral or dismissal of application.

* * * * *

(f) If an asylum applicant is granted adjustment of status to lawful permanent resident, the Service may notify the applicant that his or her asylum application will be presumed abandoned and dismissed without prejudice, unless the applicant requests in writing within 30 days of the notice that the asylum application be adjudicated. If an applicant does not respond within 30 days of the date of the notice, the Service may presume the asylum application abandoned and dismiss it without prejudice.

PART 240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

6. The authority citation for part 240 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; secs. 202, 203, and 204 of Pub. L. 105–100 (111 Stat. 2160, 2193); 8 CFR part 2.

7. In subpart F, a new § 240.58 is added to read as follows:

§ 240.58 Extreme hardship.

(a) To be eligible for suspension of deportation under former section 244(a)(1) of the Act, as in effect prior to April 1, 1997, the alien must meet the requirements set forth in the Act, which include a showing that deportation would result in extreme hardship to the alien or to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence. Extreme hardship is evaluated on a case-by-case basis, taking into account the particular facts and circumstances of each case. Applicants are encouraged to cite in their applications and to document all applicable factors, as the presence or absence of any one factor is not determinative in evaluating extreme hardship. Adjudicators should weigh all relevant factors presented and consider them in light of the totality of the circumstances, but are not required to

offer an independent analysis of each listed factor when rendering a decision.

(b) To establish extreme hardship, an applicant shall demonstrate that deportation would result in a degree of hardship beyond that typically associated with deportation. Factors that may be considered in evaluating whether deportation would result in extreme hardship to the alien or to the alien's qualified relative include, but are not limited to, the following:

(1) The age of the alien, both at the time of entry to the United States and at the time of application for suspension of deportation;

(2) The age, number, and immigration status of the alien's children and their ability to speak the native language and to adjust to life in another country;

(3) The health condition of the alien or the alien's children, spouse, or parents and the availability of any required medical treatment in the country to which the alien would be returned;

(4) The alien's ability to obtain employment in the country to which the alien would be returned;

(5) The length of residence in the United States;

(6) The existence of other family members who will be legally residing in the United States;

(7) The financial impact of the alien's departure;

(8) The impact of a disruption of educational opportunities;

(9) The psychological impact of the alien's deportation;

(10) The current political and economic conditions in the country to which the alien would be returned;

(11) Family and other ties to the country to which the alien would be returned;

(12) Contributions to and ties to a community in the United States, including the degree of integration into society;

(13) Immigration history, including authorized residence in the United States; and

(14) The availability of other means of adjusting to permanent resident status.

(c) Nothing in paragraph (a) of this section shall be construed as creating any right, interest, or entitlement that is legally enforceable by or on behalf of any party against the United States or its agencies, officers, or any other person.

8. Part 240 is amended by adding Subpart H to read as follows:

Subpart H—Applications for Suspension of Deportation or Special Rule Cancellation of Removal Under Section 203 of Public Law 105–100

Sec.

Subpart H—Applications for Suspension of Deportation or Special Rule Cancellation of Removal Under Section 203 of Public Law 105–100

§ 240.60 Definitions.

As used in this subpart the term:

ABC refers to *American Baptist Churches* v. *Thornburgh,* 760 F. Supp. 796 (N.D. Cal. 1991).

ABC class member refers to:

(1) Any Guatemalan national who first entered the United States on or before October 1, 1990; and

(2) Any Salvadoran national who first entered the United States on or before September 19, 1990.

IIRIRA refers to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, enacted as Public Law 104–208 (110 Stat. 3009–625).

NACARA refers to the Nicaraguan Adjustment and Central American Relief Act (NACARA), enacted as title II of Public Law 105–100 (111 Stat. 2160, 2193), as amended by the Technical Corrections to the Nicaraguan Adjustment and Central American Relief Act, Public Law 105–139 (111 Stat. 2644).

Registered ABC class member refers to an *ABC* class member who:

(1) In the case of an *ABC* class member who is a national of Guatemala, properly submitted an *ABC* registration form to the Service on or before December 31, 1991; or

(2) In the case of an *ABC* class member who is a national of El Salvador, properly submitted an *ABC* registration form to the Service on or before October 31, 1991, or applied for temporary protected status on or before October 31, 1991.

§ 240.61 Applicability.

(a) Except as provided in paragraph (b) of this section, this subpart H applies to the following aliens:

(1) A registered *ABC* class member who has not been apprehended at the time of entry after December 19, 1990;

(2) A Guatemalan or Salvadoran national who filed an application for asylum with the Service on or before April 1, 1990;

(3) An alien who entered the United States on or before December 31, 1990, filed an asylum application on or before December 31, 1991, and, at the time of filing the application was a national of the Soviet Union, Russia, any republic of the former Soviet Union, Latvia, Estonia, Lithuania, Poland, Czechoslovakia, Romania, Hungary, Bulgaria, Albania, East Germany, Yugoslavia, or any state of the former Yugoslavia;

(4) An alien who is the spouse or child of an individual described in paragraph (a)(1), (a)(2), or (a)(3) of this section, at the time a decision is made to suspend the deportation, or cancel the removal, of the individual described in paragraph (a)(1), (a)(2), or (a)(3) of this section;

(5) An alien who is:

(i) The unmarried son or unmarried daughter of an individual described in paragraph (a)(1), (a)(2), or (a)(3) of this section and is 21 years of age or older at the time a decision is made to suspend the deportation, or cancel the removal, of the parent described in paragraph (a)(1), (a)(2), or (a)(3) of this section; and

(ii) Entered the United States on or before October 1, 1990.

(b) This subpart H does not apply to any alien who has been convicted at any time of an aggravated felony, as defined in section 101(a)(43) of the Act.

§ 240.62 Jurisdiction.

(a) *Office of International Affairs.* Except as provided in paragraph (b) of this section, the Office of International Affairs shall have initial jurisdiction to grant or refer to the Immigration Court or Board an application for suspension of deportation or special rule cancellation of removal filed by an alien described in § 240.61, provided:

(1) In the case of a national of El Salvador described in § 240.61(a)(1), the alien filed a complete asylum application on or before January 31, 1996 (with an administrative grace period extending to February 16, 1996), or otherwise met the asylum application filing deadline pursuant to the *ABC* settlement agreement, and the application is still pending adjudication by the Service;

(2) In the case of a national of Guatemala described in § 240.61(a)(1), the alien filed a complete asylum application on or before January 3, 1995, or otherwise met the asylum application filing deadline pursuant to the *ABC* settlement agreement, and the application is still pending adjudication by the Service;

(3) In the case of an individual described in § 240.61(a) (2) or (3), the individual's asylum application is pending adjudication by the Service;

(4) In the case of an individual described in § 240.61(a) (4) or (5), the individual's parent or spouse has an application pending with the Service under this subpart H or has been granted relief by the Service under this subpart.

(b) *Immigration Court.* The Immigration court shall have exclusive jurisdiction over an application for suspension of deportation or special rule cancellation of removal filed pursuant to section 309(f)(1) (A) or (B) of IIRIRA, as amended by NACARA, by an alien who has been served Form I–221, Order to Show Cause, or Form I–862, Notice to Appear, after a copy of the charging document has been filed with the Immigration court, unless the alien is covered by one of the following exceptions:

(1) *Certain ABC class members.* (i) The alien is a registered *ABC* class member for whom proceedings before the immigration judge or the Board were administratively closed or continued (including those aliens who had final orders of deportation or removal who have filed and been granted a Motion to Reopen as required under 8 CFR 3.43);

(ii) The alien is eligible for benefits of the *ABC* settlement agreement and has not had the *de novo* asylum adjudication under the settlement agreement; and

(iii) The alien has not moved for and been granted a motion to recalendar proceedings before the Immigration Court or the Board to request suspension of deportation.

(2) *Spouses, children, unmarried sons, and unmarried daughters.* (i) The alien is described in § 240.61(a)(4) or (5);

(ii) The alien's spouse or parent is described in § 240.61(a)(1), (a)(2), or (a)(3) and has Form I–881 pending with the Service; and

(iii) The alien's proceedings before the Immigration Court have been administratively closed, or the alien's proceedings before the Board have been continued, to permit the alien to file an application for suspension of deportation or special rule cancellation of removal with the Service.

§ 240.63 Application process.

(a) Except as provided in paragraph (b) of this section, the application must be made on a Form I–881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Public Law 105–100 (NACARA)), and filed in accordance with the instructions for that form. Each application must be filed with the filing and fingerprint fees as provided in § 103.7(b) of this subchapter, or request for fee waiver, as provided in § 103.7(c) of this subchapter. The fact that an applicant has also applied for asylum does not exempt the applicant from the fingerprinting fees associated with the Form I–881.

(b) *Applications filed with EOIR.* If jurisdiction rests with the Immigration Court under § 260.62(b), the application must be made on the Form I–881, if filed subsequent to the effective date of the interim or final rule. The application form, along with any supporting documents, must be filed with the Immigration Court and served on the Service's district counsel in accordance with the instructions for the form. Applications for suspension of deportation or special rule cancellation of removal filed prior to the effective date of the interim or final rule shall be filed on Form EOIR–40, Application for Suspension of Deportation.

(c) *Applications filed with the Service.* If jurisdiction rests with the Service under § 240.62(a), the Form I–881 and supporting documents must be filed at the appropriate Service Center in accordance with the instructions for the form.

§ 240.64 Eligibility—general.

(a) *Burden and standard of proof.* The burden of proof is on the applicant to establish by a preponderance of the evidence that he or she is eligible for suspension of deportation or special rule cancellation of removal and that discretion should be exercised to grant relief.

(b) *Calculation of continuous physical presence and certain breaks in presence.* For purposes of calculating continuous physical presence under this section, section 309(c)(5)(A) of IIRIRA and section 240A(d)(1) of the Act shall not apply to persons described in § 240.61.

(1) For applications for suspension of deportation made under former section 244 of the Act, as in effect prior to April 1, 1997, the burden of proof is on the applicant to establish that any breaks in continuous physical presence were brief, casual, and innocent and did not meaningfully interrupt the period of continuous physical presence in the United States.

(2) For applications for special rule cancellation of removal made under section 309(f)(1) of IIRIRA, as amended by NACARA, the applicant shall be considered to have failed to maintain continuous physical presence in the United States if he or she has departed from the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days. The burden is on the applicant to establish that any period of absence less than 90 days was brief, casual, and innocent and did not meaningfully interrupt the period of continuous physical presence in the United States.

(3) For all applications made under this subpart, a period of continuous physical presence is terminated whenever an alien is removed from the United States under an order issued pursuant to any provision of the Act or the alien has voluntarily departed under the threat of deportation or when the departure is made for purposes of committing an unlawful act.

(4) The requirements of continuous physical presence in the United States under this subpart shall not apply to an alien who:

(i) Has served for a minimum period of 24 months in an active-duty status in the Armed Forces of the United States and, if separated from such service, was separated under honorable conditions, and

(ii) At the time of the alien's enlistment or induction was in the United States.

(c) *Factors relevant to extreme hardship.* Extreme hardship is decided on a case-by-case basis, taking into account the particular facts and circumstances of the claim and considering the factors enumerated in § 240.58. For purposes of evaluating eligibility for special rule cancellation of removal under this subpart, the factors enumerated in § 240.58 pertaining to extreme hardship resulting from deportation shall apply equally to extreme hardship resulting from removal.

§ 240.65 Eligibility for suspension of deportation.

(a) To establish eligibility for suspension of deportation under this section, the applicant must be described in § 240.61, must establish that he or she is eligible under former section 244 of the Act, as in effect prior to April 1, 1997, must not be subject to any bars to eligibility in former section 242B(e) of the Act, as in effect prior to April 1, 1997, or any other provisions of law, and must not have been convicted of an aggravated felony or be an alien described in former section 241(a)(4)(D) of the Act, as in effect prior to April 1, 1997 (relating to Nazi persecution and genocide).

(b) *General rule.* To establish eligibility for suspension of deportation under former section 244(a)(1) of the Act, as in effect prior to April 1, 1997, an alien must be deportable under any

law of the United States, except the provisions specified in paragraph (c) of this section, and must establish:

(1) The alien has been physically present in the United States for a continuous period of not less than 7 years immediately preceding the date the application was filed;

(2) During all of such period the alien was and is a person of good moral character; and

(3) The alien's deportation would, in the opinion of the Attorney General, result in extreme hardship to the alien or to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence.

(c) *Aliens deportable on criminal or certain other grounds.* To establish eligibility for suspension of deportation under former section 244(a)(2) of the Act, as in effect prior to April 1, 1997, an alien who is deportable under paragraph (2), (3), or (4) of former section 241(a) of the Act, as in effect prior to April 1, 1997 (relating to criminal activity, document fraud, failure to register, and security threats), must establish:

(1) The alien has been physically present in the United States for a continuous period of not less than 10 years immediately following the commission of an act, or the assumption of a status, constituting a ground for deportation;

(2) During all of such period the alien has been and is a person of good moral character; and

(3) The alien's deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien, or to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence.

(d) *Battered spouses and children.* To establish eligibility for suspension of deportation under former section 244(a)(3) of the Act, as in effect prior to April 1, 1997, an alien must be deportable under any law of the United States, except former section 241(a)(1)(G) of the Act, as in effect prior to April 1, 1997) (relating to marriage fraud), and except the provisions specified in paragraph (c) of this section, and must establish:

(1) The alien has been physically present in the United States for a continuous period of not less than 3 years immediately preceding the date the application was filed;

(2) The alien has been battered or subjected to extreme cruelty in the United States by a spouse or parent who is a United States citizen or lawful permanent resident (or is the parent of a child of a United States citizen or lawful permanent resident and the child has been battered or subjected to extreme cruelty in the United States by such citizen or permanent resident parent); and

(3) During all of such time in the United States the alien was and is a person of good moral character; and

(4) The alien's deportation would, in the opinion of the Attorney General, result in extreme hardship to the alien or the alien's parent or child.

§ 240.66 Eligibility for special rule cancellation of removal.

(a) To establish eligibility for special rule cancellation of removal, the applicant must show he or she is eligible under section 309(f)(1) of IIRIRA, as amended by section 203 of NACARA. The applicant must be described in § 240.61, must be inadmissible or deportable, must not be subject to any bars to eligibility in sections 240(b)(7), 240B(d), or 240A(c) of the Act, or any other provisions of law, and must not have been convicted of an aggravated felony or be an alien described in section 241(b)(3)(B)(i) of the Act (relating to persecution of others).

(b) *General rule.* To establish eligibility for special rule cancellation of removal under section 309(f)(1)(A) of IIRIRA, as amended by section 203 of NACARA, the alien must establish:

(1) The alien is not inadmissible under paragraph (2) or (3) of section 212(a) or deportable under paragraph (2), (3) or (4) of section 237(a) of the Act (relating to criminal activity, document fraud, failure to register, and security threats);

(2) The alien has been physically present in the United States for a continuous period of 7 years immediately preceding the date the application was filed;

(3) The alien has been a person of good moral character during the required period of continuous physical presence; and

(4) The alien's removal from the United States would result in extreme hardship to the alien, or to the alien's spouse, parent or child who is a United States citizen or an alien lawfully admitted for permanent residence.

(c) *Aliens inadmissible or deportable on criminal or certain other grounds.* To establish eligibility for special rule cancellation of removal under section 309(f)(1)(B) of IIRIRA, as amended by section 203 of NACARA, the alien must be described in § 240.61 and establish:

(1) The alien is inadmissible under section 212(a)(2) of the Act (relating to criminal activity), or deportable under section 237(a)(2) (other than section 237(a)(2)(A)(iii), relating to aggravated felony convictions), or 237(a)(3) of the Act (relating to criminal activity, document fraud, and failure to register);

(2) The alien has been physically present in the United States for a continuous period of not less than 10 years immediately following the commission of an act, or the assumption of a status, constituting a ground for removal;

(3) The alien has been a person of good moral character during the required period of continuous physical presence; and

(4) The alien's removal from the United States would result in exceptional and extremely unusual hardship to the alien or the alien's spouse, parent, or child, who is a United States citizen or an alien lawfully admitted for permanent residence.

§ 240.67 Procedure for interview before an asylum officer.

(a) *Fingerprinting requirements.* The Service will notify each applicant 14 years of age or older to appear for an interview only after the applicant has complied with fingerprinting requirements pursuant to § 103.2(e) of this subchapter, and the Service has received a definitive response from the Federal Bureau of Investigation (FBI) that a full criminal background check has been completed. A definitive response that a full criminal background check on an applicant has been completed includes:

(1) Confirmation from the FBI that an applicant does not have an administrative or criminal record;

(2) Confirmation from the FBI that an applicant has an administrative or a criminal record; or

(3) Confirmation from the FBI that two properly prepared fingerprint cards (Form FD–258) have been determined unclassifiable for the purpose of conducting a criminal background check and have been rejected.

(b) *Interview.* (1) The asylum officer shall conduct the interview in a non-adversarial manner and, except at the request of the applicant, separate and apart from the general public. The purpose of the interview shall be to elicit all relevant and useful information bearing on the applicant's eligibility for suspension of deportation or special rule cancellation of removal. If the applicant has an asylum application pending with the Service, the asylum officer shall also elicit information relating to the application for asylum in accordance with § 208.9 of this subchapter. At the time of the interview,

the applicant must provide complete information regarding the applicant's identity, including name, date and place of birth, and nationality, and may be required to register this identity electronically or through any other means designated by the Attorney General.

(2) The applicant may have counsel or a representative present, may present witnesses, and may submit affidavits of witnesses and other evidence.

(3) An applicant unable to proceed with the interview in English must provide, at no expense to the Service, a competent interpreter fluent in both English and a language in which the applicant is fluent. The interpreter must be at least 18 years of age. The following individuals may not serve as the applicant's interpreter: the applicant's attorney or representative of record; a witness testifying on the applicant's behalf; or, if the applicant also has an asylum application pending with the Service, a representative or employee of the applicant's country of nationality, or, if stateless, country of last habitual residence. Failure without good cause to comply with this paragraph may be considered a failure to appear for the interview for purposes of § 240.68.

(4) The asylum officer shall have authority to administer oaths, verify the identify of the applicant (including through the use of electronic means), verify the identify of any interpreter, present and receive evidence, and question the applicant and any witnesses.

(5) Upon completion of the interview, the applicant or the applicant's representative shall have an opportunity to make a statement or comment on the evidence presented. The asylum officer may, in the officer's discretion, limit the length of such statement or comment and may require its submission in writing. Upon completion of the interview, the applicant shall be informed that the applicant must appear in person to receive and to acknowledge receipt of the decision and any other accompanying material at a time and place designated by the asylum officer, except as otherwise provided by the asylum officer.

(6) The asylum officer shall consider evidence submitted by the applicant with the application, as well as any evidence submitted by the applicant before or at the interview. As a matter of discretion, the asylum officer may grant the applicant a brief extension of time following an interview during which the applicant may submit additional evidence.

§ 240.68 Failure to appear at an interview before an asylum officer or failure to follow requirements for fingerprinting.

Failure to appear for a scheduled interview without prior authorization may result in dismissal of the application or waiver of the right to an interview. Failure to comply with fingerprint processing requirements without good cause may result in dismissal of the application or waiver of the right to an adjudication by an asylum officer. Failure to appear shall be excused if the notice of the interview or fingerprint appointment was not mailed to the applicant's current address and such address had been provided to the Office of International Affairs by the applicant prior to the date of mailing in accordance with section 265 of the Act and regulations promulgated thereunder, unless the asylum officer determines that the applicant received reasonable notice of the interview or fingerprinting appointment. Failure to appear at the interview or fingerprint appointment shall be excused if the applicant demonstrates that such failure was the result of exceptional circumstances.

§ 240.69 Reliance on information compiled by other sources.

In determining whether an applicant is eligible for suspension of deportation or special rule cancellation of removal, the asylum officer may rely on material described in § 208.12 of this chapter. Nothing in this subpart shall be construed to entitle the applicant to conduct discovery directed towards records, officers, agents, or employees of the Service, the Department of Justice, or the Department of State.

§ 240.70 Decision by the Service.

(a) *Service of decision.* Unless otherwise provided by an Asylum Office, the applicant will be required to return to the Asylum Office to receive service of the decision on the applicant's application. If the applicant does not speak English fluently, the applicant shall bring an interpreter when returning to the office to receive service of the decision.

(b) *Grant of suspension of deportation.* An asylum officer may grant suspension of deportation to an applicant eligible to apply for this relief with the Service who qualifies for suspension of deportation under former section 244(a)(1) of the Act, as in effect prior to April 1, 1997, who is not an alien described in former section 241(a)(4)(D) of the Act, as in effect prior to April 1, 1997, and who admits deportability under any law of the United States, excluding paragraph (2), (3), or (4) of former section 241(a) of the Act, as in effect prior to April 1, 1997. If the Service has made a preliminary decision to grant the applicant suspension of deportation under this subpart, the applicant shall be notified of that decision and asked to sign an admission of deportability or inadmissibility. The applicant must sign the concession before the Service may grant the relief sought. If suspension of deportation is granted, the Service shall adjust the status of the alien to lawful permanent resident, effective as of the date that suspension of deportation is granted.

(c) *Grant of cancellation of removal.* An asylum officer may grant cancellation of removal to an applicant who is eligible to apply for this relief with the Service, and who qualifies for cancellation of removal under section 309(f)(1)(A) of IIRIRA, as amended by section 203 of NACARA, and who admits deportability under section 237(a), excluding paragraphs (2), (3), and (4), of the Act, or inadmissibility under section 212(a), excluding paragraphs (2) or (3), of the Act. If the Service has made a preliminary decision to grant the applicant cancellation of removal under this subpart, the applicant shall be notified of that decision and asked to sign an admission of deportability or inadmissibility. The applicant must sign the concession before the Service may grant the relief sought. If the Service grants cancellation of removal, the Service shall adjust the status of the alien to lawful permanent resident, effective as of the date that cancellation of removal is granted.

(d) *Referral of the application.* Except as provided in paragraphs (e) and (f) of this section, and unless the applicant is granted asylum or is in lawful immigrant or non-immigrant status, an asylum officer shall refer the application for suspension of deportation or special rule cancellation of removal to the Immigration Court for adjudication in deportation or removal proceedings, if:

(1) The applicant is not clearly eligible for suspension of deportation under former section 244(a)(1) of the Act as in effect prior to April 1, 1997, or for cancellation of removal under section 309(f)(1)(A of IIRIRA, as amended by NACARA;

(2) The applicant does not appear to merit relief as a matter of discretion;

(3) The applicant appears to be eligible for suspension of deportation or special rule cancellation of removal under this subpart, but does not admit deportability or inadmissibility; or

(4) The applicant failed to appear for a scheduled interview with an asylum officer or failed to comply with

fingerprinting processing requirements and such failure(s) was not excused by the Service, unless the application is dismissed.

(e) *Dismissal of the application.* An asylum officer shall dismiss without prejudice an application for suspension of deportation or special rule cancellation of removal submitted by an applicant who has been granted asylum, or who is in lawful immigrant or non-immigrant status. An asylum officer may also dismiss an application for failure to appear, pursuant to § 240.68.

(f) *Special provisions for certain ABC class members whose proceedings before EOIR were administratively closed or continued.* The following provisions shall apply with respect to an *ABC* class member who was in proceedings before the Immigration Court or the Board, and those proceedings were closed or continued pursuant to the *ABC* settlement agreement:

(1) *Suspension of deportation or asylum granted.* If an asylum officer grants asylum or suspension of deportation, the previous proceedings before the Immigration Court or Board shall be terminated as a matter of law on the date relief is granted.

(2) *Asylum denied and application for suspension of deportation not approved.* If an asylum officer denies asylum and does not grant the applicant suspension of deportation, the Service shall move to recalendar proceedings before the Immigration Court or resume proceedings before the Board, whichever is appropriate. The Service shall refer to the Immigration Court or the Board the application for suspension of deportation. In the case where jurisdiction rests with the Board, an application for suspension of deportation that is referred to the Board will be remanded to the immigration judge for adjudication.

(g) *Special provisions for dependents whose proceedings before EOIR were administratively closed or continued.* If an asylum officer grants suspension of deportation or special rule cancellation of removal to an applicant described in § 240.61(a)(4) or (a)(5), whose proceedings before EOIR were administratively closed or continued, those proceedings shall terminate as of the date the relief is granted. If suspension of deportation or special rule cancellation of removal is not granted, the Service shall move to recalendar proceedings before the Immigration Court or resume proceedings before the Board, whichever is appropriate. The Service shall refer to the Immigration Court or the Board the application for suspension of deportation or special rule cancellation of removal. In the case where jurisdiction rests with the Board, an application for suspension of deportation or special rule cancellation of removal that is referred to the Board will be remanded to the immigration judge for adjudication.

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

9. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

10. Section 274a.12 is amended by revising the first sentence in paragraph (c)(10), to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(c) * * *

(10) An alien who has filed an application for suspension of deportation under section 244 of the Act (as it existed prior to April 1, 1997), cancellation of removal pursuant to section 240A of the Act, or special rule cancellation of removal under section 309(f)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, enacted as Public Law 104–208 (110 Stat. 3009–625) (as amended by the Nicaraguan Adjustment and Central American Relief Act (NACARA), title II of Public Law 105–100 (111 Stat. 2160, 2193) and whose application has been accepted by the Service or EOIR.

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PART 299—IMMIGRATION FORMS

11. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

12. Section 299.1 is amended in the table by adding the entry for Form ''I–881'' in proper numerical sequence, to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
*	*	*
I–881	10–01–98	Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Public Law 105–100).
*	*	*

13. Section 299.5 is amended in the table by adding the entry for Form ''I–881'' in proper numerical sequence, to read as follows:

§ 299.5 Display of control numbers.

* * * * *

INS form No.	INS form title	Currently assigned OMB control No.
*	*	*
I–881	Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Public Law 105–100).	1115–xxxx.
*	*	*

Dated: November 17, 1998.

Janet Reno,

Attorney General.

[FR Doc. 98–31348 Filed 11–23–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–144–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This proposal would require repetitive inspections of the outboard nacelle struts to detect fatigue cracking of the strut skin and spring beam support fittings, and to detect cracked or loose fasteners of the support fittings; and corrective actions, if necessary. This proposal also provides for optional terminating action for the repetitive inspection requirements. This proposal is prompted by reports indicating that several cracked or broken spring beam support fittings were found on the outboard nacelle struts. The actions specified by the proposed AD are intended to detect and correct such fatigue cracking and loose fasteners, which could result in failure of the outboard nacelle struts and consequent separation of the engine.

DATES: Comments must be received by January 8, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–144–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–144–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–144–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports from three operators indicating findings of six cracked or broken spring beam support fittings on the outboard struts of Model 747 series airplanes. Four of the cracked or broken support fittings were found on strut number 1 (left outboard strut), and two others were found on strut number 4 (right outboard strut).

An operator of a Model 747–200 combi airplane that had accumulated 76,372 total flight hours and 14,501 total flight cycles reported finding a 5-inch crack in the inboard skin panel during a preflight check on the number 1 strut, and further investigation revealed a fractured support fitting on the inboard side of that strut. An operator of a Model 747–200F airplane equipped with General Electric CF6–50 series engines, which had accumulated 71,609 total flight hours and 14,808 total flight cycles, reported findings of a severed support fitting on the number 1 strut.

Another operator of a Model 747–200F airplane equipped with Pratt & Whitney JT9D–70 series engines reported findings of two broken support fittings, one on the number 1 strut and one on the number 4 strut. A report indicated that, during a heavy maintenance preliminary check, a misaligned stripe on the outboard nacelle strut was found. Further investigation revealed a broken spring beam on the outboard side of the number 4 strut and a broken support fitting. This airplane had accumulated 72,426 total flight hours and 18,142 total flight cycles. An inspection of the remaining fleet of similar airplanes revealed findings of two fractured support fittings on an airplane that had accumulated 66,035 total flight hours and 16,709 total flight cycles.

All of these operators reported findings of cracked or severed spring beam support fittings located on the inboard side of the strut and attached to the strut skin. These conditions, if not corrected, could cause fatigue cracking of the strut skin and spring beam support fittings on the outboard nacelle struts, which could result in failure of the outboard nacelle struts and consequent separation of the engine.

Other Relevant Rulemaking

The FAA has previously issued AD 95–13–07, amendment 39–9287 (60 FR 33336, June 28, 1995), which currently requires modification of the nacelle strut and wing structure, inspections and checks to detect discrepancies, and correction of discrepancies. The corrective action specified by that AD included a modification to improve the damage tolerance capability and durability of the strut-to-wing attachments, reduce reliance on non-routine inspections of those attachments, and prevent failure of the strut and consequent separation of the engine. Although the accomplishment of the modification required by that AD constitutes terminating action for the requirements of that AD, this proposed AD specifies that same modification as an optional terminating action.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–

54A2172, dated February 23, 1995, and Boeing Service Bulletin 747–54A2172, Revision 1, dated January 4, 1996, which describe similar procedures for detecting cracks of the strut skin and spring beam support fittings, or detecting cracked or loose fasteners of the support fittings; and corrective actions, if necessary.

The initial inspections differ from the repetitive inspections. The initial inspections include a visual inspection of the four spring beam support fittings, a detailed visual inspection of the support fitting at the fasteners using a borescope, a visual inspection of the fasteners, and a detailed visual inspection of the strut skin. The repetitive inspections include an inspection of the support fitting at fasteners through the horizontal flange, an inspection of the fasteners through the vertical flange for loose collars, an external visual inspection for loose fastener heads, and a detailed visual inspection of the strut skin.

The terminating action in both service bulletins specifies an open-hole high frequency eddy current (HFEC) inspection and, if no cracks are found, rework of the fastener holes and installation of new fasteners. For airplanes on which any cracks are found during the HFEC inspection, Part III of the Accomplishment Instructions of the Boeing alert service bulletin specifies contacting the manufacturer for repair instructions. However, for those same airplanes, Revision 1 of the Boeing service bulletin adds a new section to the Accomplishment Instructions (''Part IV. Replacement''), which specifies procedures for replacing any cracked spring beam support fitting with a new support fitting. Accomplishment of this replacement action would eliminate the need for the repetitive inspections of that new support fitting.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 747 series airplanes of this same type design, the proposed AD would require accomplishment of the actions specified by the service bulletins described previously, except as discussed below. The proposed AD also provides for several optional terminating actions. If no cracks are found, rework of the fastener holes and installation of new fasteners would constitute terminating action for the repetitive inspection requirements of this AD. If cracks are found during an open-hole HFEC inspection, replacement of the spring beam support fittings with new fittings constitutes optional terminating action for the repetitive inspection requirements of this AD.

Differences Between Proposed Rule and Service Information

Operators should note the following differences between the proposed rule and the service information:

Boeing Alert Service Bulletin 747–54A2172, dated February 23, 1995, and Boeing Service Bulletin 747–54A2172, Revision 1, dated January 4, 1996, provide procedures for terminating actions for the repetitive inspections. However, this proposed AD specifies those actions as optional terminating actions since the FAA has previously issued AD 95–13–07, which requires a terminating modification that is considered acceptable for compliance with the optional terminating action specified by this AD.

Although the Boeing alert service bulletin specifies that the manufacturer may be contacted for the disposition of certain repair conditions, this proposal would require that the repair of those conditions be accomplished in accordance with a method approved by the FAA.

Cost Impact

There are approximately 145 airplanes of the affected design in the worldwide fleet. The FAA estimates that 9 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 16 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $8,640, or $960 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the fastener hole inspection and modification, it would take approximately 20 work hours (excluding removal of the strut and spring beam) to accomplish it, at an average labor rate of $60 per hour. Based on these figures, the cost impact of this optional terminating action is estimated to be $1,200 per strut.

Should an operator elect to accomplish the replacement of the spring beam support fittings with new support fittings, it would take approximately 108 work hours (excluding removal of the strut and spring beam) to accomplish it, at an average labor rate of $60 per hour. Based on these figures, the cost impact of this optional terminating action is estimated to be $6,480 per support fitting.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

BOEING: Docket 98–NM–144–AD.

Applicability: Model 747 series airplanes, line numbers 202 through 886 inclusive, equipped with General Electric Model CF6–45/50 and Pratt & Whitney Model JT9D–70 series engines; on which the strut/wing modification has not been accomplished in accordance with AD 95–13–07, amendment 39–9287; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the strut skin and spring beam support fittings on the outboard nacelle struts, and cracked or loose fasteners of the support fittings, which could result in failure of the outboard nacelle struts and consequent separation of the engine, accomplish the following:

(a) Prior to the accumulation of 13,000 total flight cycles, or within 6 months after the effective date of this AD, whichever occurs later, perform a detailed visual inspection of the outboard nacelle struts, as specified by paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this AD, in accordance with Boeing Alert Service Bulletin 747–54A2172, dated February 23, 1995, or Boeing Service Bulletin 747–54A2172, Revision 1, dated January 4, 1996.

(1) Inspect the spring beam support fittings to detect cracks of the support fittings.

(2) Inspect the spring beam support fittings at the fasteners, using a borescope to detect cracks of the support fittings.

(3) Inspect the fasteners of the outer spring beam support fittings to detect cracked or loose fasteners.

(4) Inspect the strut skin to detect cracks.

(b) If no discrepancy is found during any inspection required by paragraph (a) of this AD, perform detailed visual inspections of the outboard nacelle struts to detect any discrepancies specified in paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this AD, in accordance with Boeing Alert Service Bulletin 747–54A2172, dated February 23, 1995; or Boeing Service Bulletin 747–54A2172, Revision 1, dated January 4, 1996. Perform the inspection at the times specified in paragraph (c) or (d) of this AD, as applicable.

(1) Perform a detailed visual inspection, using a borescope, of only the outer spring beam support fittings at the fasteners through the horizontal flange to detect cracks of the support fittings.

(2) Perform a detailed visual inspection, using a borescope, of the fasteners through the vertical flange of only the outer spring beam support fittings to detect loose collars.

(3) Perform an external detailed visual inspection of only the outer spring beam support fittings to detect cracked or loose fastener heads.

(4) Perform a detailed visual inspection of the strut skin to detect cracks.

(c) For Model 747–SR series airplanes equipped with General Electric Model CF6–45 series engines, on which no discrepancy is found during any inspection required by paragraph (a) of this AD: Perform the inspection required by paragraph (b) of this AD within 1,600 flight cycles following the accomplishment of the inspection required by paragraph (a) of this AD; and thereafter at intervals not to exceed 1,600 flight cycles until accomplishment of the optional terminating action specified in paragraph (g) of this AD.

(d) For Model 747 series airplanes other than those identified in paragraph (c) of this AD, on which no discrepancy is found during any inspection required by paragraph (a) of this AD: Perform the inspection required by paragraph (b) of this AD within 1,000 flight cycles following the accomplishment of the inspection required by paragraph (a) of this AD; and thereafter at intervals not to exceed 1,000 flight cycles until accomplishment of the optional terminating action specified in paragraph (g) of this AD.

(e) If any cracking is found in the spring beam support fittings during any inspection required by this AD, prior to further flight, replace the support fitting with a new support fitting, in accordance with the Accomplishment Instructions in Part IV. of Boeing Service Bulletin 747–54A2172, Revision 1, dated January 4, 1996. Accomplishment of this replacement constitutes terminating action for the repetitive inspection requirements of this AD for only the new support fitting. Continue the repetitive inspections required by paragraph (b) of this AD for the other support fitting locations until accomplishment of the terminating action specified by paragraph (g)(1) or (g)(2) of this AD, as applicable.

(f) If any crack is found on the strut skin, or if any cracked or loose fastener or collar is found during any inspection required by this AD, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings.

(g) Accomplishment of an open-hole high frequency eddy current (HFEC) inspection, in accordance with Boeing Alert Service Bulletin 747–54A2172, dated February 23, 1995, or Boeing Service Bulletin 747–54A2172, Revision 1, dated January 4, 1996; and either paragraph (g)(1) or (g)(2) of this AD, as applicable; constitutes terminating action for the requirements of this AD.

(1) If no discrepancy is found during the HFEC inspection, prior to further flight, rework the fastener holes and install new fasteners, in accordance with Figures 6 and 7 of Boeing Alert Service Bulletin 747–54A2172, dated February 23, 1995, or Boeing Service Bulletin 747–54A2172, Revision 1, dated January 4, 1996.

(2) If any cracking is found during the HFEC inspection, prior to further flight, replace any cracked spring beam support fitting with a new support fitting, in accordance with Part IV. of the Accomplishment Instructions specified by Boeing Service Bulletin 747–54A2172, Revision 1, dated January 4, 1996.

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 18, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31327 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–76–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing 747 series airplanes, that currently requires a one-time inspection to detect cracking and corrosion of various areas at all four nacelle struts; and repair, if necessary. This action would require new repetitive inspections to detect fatigue cracking or loose or missing fasteners of the aft torque bulkheads of the outboard nacelle struts; and repair, if necessary. In addition, this action would expand the applicability of the existing AD to include additional airplanes. This proposal is prompted by the availability of new service instructions for detecting fatigue cracking that would not have been detected by the required actions of the existing AD. The actions specified by the proposed AD are intended to detect and correct such fatigue cracking

and loose or missing fasteners, which could result in failure of an outboard nacelle strut, and consequent separation of the nacelle from the wing.

DATES: Comments must be received by January 8, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–76–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–76–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–76–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 31, 1996, the FAA issued AD 96–26–51, amendment 39–9876 (62 FR 1038, January 8, 1997), applicable to certain Boeing 747 series airplanes, to require a one-time detailed visual inspection to detect cracking and corrosion of various areas at all four nacelle struts; and repair, if necessary. That action was prompted by reports of cracking of the aft torque bulkhead at the inboard and outboard nacelle struts. That action was applicable only to Model 747 series airplanes that were equipped with Rolls-Royce-type engines. The requirements of that AD were intended to detect and correct cracking of an inboard or outboard nacelle strut, which could result in failure of the nacelle strut and consequent separation of the nacelle from the wing.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has learned that the original report of fatigue cracking on the inboard strut was made in error. In fact, what was at first thought to be a fatigue crack on the inboard strut was later determined to be merely a surface scratch in the finish of the structure. Furthermore, the FAA has determined from the service history of the Model 747 airplane that only the outboard strut has proved to be susceptible to fatigue cracking of the aft torque bulkhead. Investigation has revealed that this is because the applied loading spectrum and design configuration of the outboard strut are significantly different from those of the inboard strut.

In addition, since the issuance of AD 96–26–51, the FAA has received an additional report of fatigue cracking found on another Model 747 airplane, which also was equipped with Rolls-Royce-type engines. The affected airplane had accumulated 18,663 total flight cycles. That airplane was found to have cracking on both the inboard and outboard vertical chords of the aft torque bulkhead on the number 4 nacelle strut. Specifically, two cracks of 0.53 inch and 0.34 inch in length were found on the inboard vertical chord of the aft torque bulkhead; and a single 0.12-inch crack was found on the outboard vertical chord of the aft torque bulkhead.

In addition, whereas the strut design configurations and applied loading spectra are significantly different for the inboard and outboard struts, analysis shows that this is not the case for many of the different engine types that can be installed on the outboard strut. Therefore, outboard struts equipped with Rolls-Royce Model RB211, General Electric Model CF6–45/50, or Pratt & Whitney Model JT9D–70 series engines also may be susceptible to fatigue cracking.

Also, the FAA has received reports of nine other nacelle struts that were found to have loose fasteners at the attachment between the vertical flange of the lower spar fitting and the aft torque bulkhead; there have been no reports of missing fasteners at this location. The cause of the fasteners becoming loose is not yet known.

These conditions (namely, fatigue cracking of the outboard nacelle strut aft torque bulkhead web, vertical chords, and side skin; or loose fasteners where the lower spar fitting attaches to the aft torque bulkhead), if not corrected, could result in failure of an outboard nacelle strut, and consequent separation of the nacelle from the wing.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–54A2184, dated July 3, 1997. The alert service bulletin describes procedures for repetitive detailed visual inspections to detect fatigue cracking of the web, vertical chords, and nacelle strut side skin of the aft torque bulkheads of the number 1 and 4 nacelle struts; and repair, if necessary. The repetitive inspections will also detect loose or missing fasteners on the lower spar fitting of the aft torque bulkhead. In addition, the alert service bulletin describes procedures for various repetitive non-destructive test (NDT) inspections to detect fatigue cracking of the aft torque bulkhead of the numbers 1 and 4 nacelle struts; and repair, if necessary. The NDT inspections consist of ultrasonic inspections, surface eddy current inspections, and open-hole eddy current inspections. The type of NDT inspection to be done depends upon the type of nacelle strut on the affected airplane. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede all requirements of AD 96–26–51. This proposed AD would require repetitive detailed visual inspections and, for certain engine types, NDT inspections, to detect fatigue cracking or loose or missing fasteners of the aft torque bulkheads of the outboard nacelle struts; and repair, if necessary. This proposed AD also would revise the applicability of the existing AD to include additional airplanes having engine types in addition to those specified in the existing AD.

This proposed AD also provides for an optional terminating action for the repetitive inspections proposed for airplanes equipped with General Electric CF6–45/50 or Pratt & Whitney JT9D–70 nacelle struts. [This same terminating action, although optional for this proposed AD, is required by another AD, namely, AD 95–13–07, amendment 39–9287 (60 FR 33336, June 28, 1995), as discussed below]. The FAA notes that there is, as yet, no terminating action for those airplanes equipped with Rolls-Royce RB–211 nacelle struts.

The actions above would be required to be accomplished in accordance with the alert service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Alert Service Bulletin

Operators should note that, although the alert service bulletin provides for certain repair actions and specifies that the manufacturer may be contacted for disposition of other repair conditions, this proposal would require the repair of all conditions to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company designated engineering representative who has been authorized by the FAA to make such findings.

In addition, operators should note that there is a typographical error on Sheet 3 of Figure 1 of the alert service bulletin. The logic block that contains a reference to ''Group 1 airplanes'' should have read ''Groups 1 and 2 airplanes.''

Other Relevant Rulemaking

The FAA has previously issued AD 95–13–07, which requires modification of airplanes equipped with General Electric CF6–45/50 or Pratt & Whitney JT9D–70 nacelle struts. Accomplishment of the modification required by that AD constitutes terminating action for the requirements of this proposed AD. However, this proposed AD would not affect the current requirements of AD 95–13–07.

Cost Impact

There are approximately 273 airplanes of the affected design in the worldwide fleet. The FAA estimates that 24 airplanes of U.S. registry would be affected by this proposed AD.

The new inspections that are proposed in this AD action for airplane Groups 3 and 4 would take approximately 24 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators of airplanes in Groups 3 and 4 is estimated to be $34,560, or $1,440 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

There currently are no affected airplanes on the U.S. Register identified as Group 1 or 2 in the referenced alert service bulletin. The airplanes included in Groups 1 and 2 of the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected Group 1 or 2 airplane be imported and placed on the U.S. Register in the future, it would require approximately 78 work hours to accomplish the new inspections proposed in this AD, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed AD on airplane Groups 1 and 2 would be $4,680 per airplane, per inspection cycle.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9876 (62 FR 1038, January 8, 1997), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 98-NM–76-AD. Supersedes AD 96–26–51, Amendment 39–9876.

Applicability: Model 747 series airplanes, as listed in Boeing Alert Service Bulletin 747–54A2184, dated July 3, 1997, certificated in any category:

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking and loose or missing fasteners of the aft torque bulkheads of the outboard nacelle struts, which could result in failure of an outboard nacelle strut, and consequent separation of the nacelle from the wing, accomplish the following:

(a) For airplanes identified as Groups 1 and 2 airplanes in Boeing Alert Service Bulletin 747–54A2184, dated July 3, 1997: Prior to the accumulation of 12,000 total flight cycles, or within 90 days after the effective date of this AD, whichever occurs later, perform a detailed visual inspection of the aft torque bulkheads of the number 1 and number 4 nacelle struts to detect fatigue cracking and loose or missing fasteners. The inspection shall be accomplished in accordance with Part I of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2184, dated July 3, 1997.

Note 2: There is a typographical error on Sheet 3 of Figure 1 of the alert service bulletin. The words ''Group 1 airplanes'' should read ''Groups 1 and 2 airplanes.''

(1) If no cracking, and if no loose or missing fastener is found, repeat the inspection thereafter at the intervals specified in Figure 1 of the alert service bulletin.

(2) If any cracking, or if any loose or missing fastener is found, prior to further flight, repair in accordance with Part III of the alert service bulletin. Repeat the inspection thereafter at the intervals specified in Figure 1 of the alert service bulletin. Where the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company designated engineering representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings.

(b) For airplanes identified as Groups 1 and 2 airplanes in Boeing Alert Service Bulletin 747–54A2184, dated July 3, 1997: Prior to the accumulation of 12,000 total flight cycles, or within 90 days after the effective date of this AD, whichever occurs later, perform a non-destructive test (NDT) inspection of the aft torque bulkheads of the number 1 and number 4 nacelle struts to detect fatigue cracking. The NDT inspection shall be accomplished in accordance with Part II of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2184, dated July 3, 1997.

Note 3: The alert service bulletin refers to a variety of NDT inspections, consisting of ultrasonic inspections, surface eddy current inspections, and open-hole eddy current inspections. The logic diagram in Figure 1 of the alert service bulletin states the conditions under which each of these inspections is to be performed.

(1) If no cracking is found, repeat the inspection thereafter at the intervals specified in Figure 1 of the alert service bulletin.

(2) If any cracking is found, prior to further flight, repair in accordance with Part III of the alert service bulletin. Repeat the inspection thereafter at the intervals specified in Figure 1 of the alert service bulletin. Where the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, repair in accordance with a method approved by the Manager, Seattle ACO; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings.

(c) For airplanes identified as Groups 3 and 4 airplanes in Boeing Alert Service Bulletin 747–54A2184, dated July 3, 1997: Prior to the accumulation of 12,000 total flight cycles, or within 90 days after the effective date of this AD, whichever occurs later, perform a detailed visual inspection of the aft torque bulkheads of the number 1 and number 4 nacelle struts to detect fatigue cracking and loose or missing fasteners. The inspection shall be accomplished in accordance with Part I of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2184, dated July 3, 1997.

(1) If no cracking, and if no loose or missing fastener is found, repeat the inspection thereafter at the intervals specified in Figure 1 of the alert service bulletin, until the applicable requirements of paragraph (d) are accomplished.

(2) If any cracking, or if any loose or missing fastener is found, prior to further flight, repair in accordance with Part III of the alert service bulletin. Where the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, repair in accordance with a method approved by the Manager, Seattle ACO; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings.

(d) For airplanes identified as Groups 3 and 4 airplanes in Boeing Alert Service Bulletin 747–54A2184, dated July 3, 1997: Accomplishment of the nacelle strut modifications required in AD 95–13–07, amendment 39–9287 (applicable to airplanes equipped with either General Electric CF6–45/50 or Pratt & Whitney JT9D–70 nacelle struts), constitutes terminating action for the requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 18, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31326 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–150–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to all Airbus Model A300–600 series airplanes, that would have required repetitive eddy current inspections to detect cracks on the forward fittings in the radius of frame 40 adjacent to the tension bolts in the center section of the wings, and various follow-on actions. That proposal was prompted by reports of cracking due to fatigue-related stress in the radius of frame 40 adjacent to the tension bolts at the center/outer wing junction. This new action revises the proposed rule by requiring ultrasonic inspections, in lieu of the eddy current inspection proposed previously. This action also reduces the compliance time to perform the initial inspection, increases the repetitive inspection intervals, and adds flight hours as a compliance option. The actions specified by this new proposed AD are intended to detect and correct fatigue cracking on the forward fittings in the radius of frame 40 adjacent to the tension bolts in the center section of the wings, which could result in reduced structural integrity of the wings.

DATES: Comments must be received by December 21, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No 95–NM–150–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–150–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 95–NM–150–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to all Airbus Model A300–600 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on March 6, 1996 (61 FR 8897). That NPRM would have required repetitive eddy current inspections to detect cracks on the forward fittings in the radius of frame 40 adjacent to the tension bolts in the center section of the wings, and various follow-on actions. That NPRM was prompted by reports of cracking due to fatigue-related stress in the radius of frame 40 adjacent to the tension bolts at the center/outer wing junction. That condition, if not corrected, could result in reduced structural integrity of the wings.

Actions Since Issuance of Previous Proposal

Since the issuance of that NPRM, the FAA has given due consideration to the comments received in response to the NPRM. The comments that have prompted a change in the proposal are explained below.

Request To Reference New Revision of the Service Bulletin

Two commenters [the Air Transport Association (ATA) of America and the manufacturer] request that the FAA revise the proposed AD to reference a new revision of the service bulletin referenced in the proposed AD.

The FAA concurs with the commenters' request to revise the proposed AD to reference a new version of the service bulletin. Since issuance of the NPRM, Airbus has issued Service Bulletin A300–57–6062, Revision 02, dated January 29, 1997. That service bulletin describes procedures for an ultrasonic inspection, in lieu of the eddy current inspection described in the original issue of the service bulletin (which was referenced in the original NPRM as the appropriate source of service information), to detect cracking on the forward fittings in the radius of frame 40 adjacent to the tension bolts in the center section of the wings, and various follow-on actions. If no cracking is detected, those follow-on actions consist of repetitive ultrasonic inspections. If any cracking is detected, the follow-on actions include installation of an access door or doors, repetitive eddy current inspections to confirm the presence of a crack, and blending of the crack or cracks, if necessary. If the blended area is 50 millimeters (mm) long or more, or exceeds 2 mm in depth, the service bulletin provides for repair in accordance with procedures to be provided by Airbus.

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, classified Airbus Service Bulletin A300–57–6062, Revision 02, as mandatory and issued a new French airworthiness directive, 95–063–177(B)R3, dated July 2, 1997, in order to assure the continued airworthiness of these airplanes in France.

The FAA finds that accomplishment of the actions specified in Airbus Service Bulletin A300–57–6062, Revision 02, would adequately address the identified unsafe condition, while also providing an inspection method that limits the number of work hours necessary to gain access to the areas to be inspected, thereby minimizing the economic impact of the inspection. Therefore, the FAA has revised the proposed AD to specify Revision 02 of the service bulletin as the appropriate source of service information. The cost impact information of the proposed AD also has been revised to reflect a reduction in the number of work hours necessary to complete the inspection procedure.

Request To Adjust Inspection Thresholds and Intervals

One commenter, the manufacturer, requests that the FAA revise the proposed AD to require inspection thresholds and repetitive intervals to be calculated based on average flight time using the ''adjustment for range'' formula referenced in both the original and revised service bulletins. Such adjustment is designed to account for variations in the amount of fatigue damage due to loading and flight length and may result in reductions in the inspection threshold and intervals.

The FAA does not concur that operators should be required to calculate inspection thresholds and repetitive intervals using the ''adjustment for range'' formula. Use of such a formula would introduce a planning burden for the operator, make enforcement difficult for the FAA, and potentially introduce differences between FAA inspectors and operators concerning when the inspection thresholds and intervals should be recalculated.

However, under the provisions of paragraph (d)(2) of this supplemental NPRM, the FAA may approve requests for adjustment of the inspection thresholds and intervals. The request for extension should be based on the ''adjustment for range'' formula referenced in Airbus Service Bulletin A300–57–6062, Revision 02, and the average flight time per flight cycle used in the formula should be for an individual airplane. Average flight times for a group of airplanes may be used if flight times for all airplanes included in the group do not vary by more than 10

percent, and the flight times for individual airplanes within the group must be included with the request, for review by the FAA.

The FAA acknowledges, however, that the inspection thresholds and intervals specified in the original proposal may not be conservative, based on the utilization of certain airplanes. Also, French airworthiness directive 95–063–177(B)R3 reduces the inspection threshold specified in the original issue of French airworthiness directive 95–063–177(B), dated April 12, 1995. In consideration of the commenter's request, and in concert with the French airworthiness directive, the FAA has determined that the inspection threshold for this proposal should be reduced from 10,500 total landings, as specified in the original proposal, to 7,250 total landings. The FAA also has determined that the inspection thresholds and intervals may be calculated using flight hours; thus the inspection threshold has been revised to provide for the inspection to be performed prior to the accumulation of 17,700 total flight hours.

The repetitive inspection intervals for this proposal also have been increased from 4,500 landings to 6,500 landings or 16,000 flight hours, for airplanes on which no cracking is detected; and from 950 landings to 2,800 landings or 7,000 flight hours, for certain airplanes on which cracking is detected. Paragraphs (a), (b), and (c)(1) of this supplemental NPRM have been revised to reduce the inspection thresholds, increase the repetitive inspection intervals, and add flight hours as a compliance option.

Differences Between the Supplemental NPRM and Foreign AD

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this supplemental NPRM, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this supplemental NPRM.

Operators also should note that the inspection thresholds and intervals for this supplemental NPRM differ from those specified in the French airworthiness directive. In developing the appropriate inspection thresholds and intervals for this supplemental NPRM, the FAA considered not only the manufacturer's recommendation and the average utilization rate of the affected U.S. registered airplanes, but the safety implications involved with cracking in the radius of frame 40 adjacent to the tension bolts at the center/outer wing junction. In light of these factors, the FAA finds the proposed compliance time (7,250 total landings or 17,700 total flight hours) specified in the supplemental NPRM for initiating the required actions to be warranted, in that it represents an appropriate interval of time allowable for the affected airplanes to continue to operate without compromising safety.

Conclusion

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

The FAA estimates that 35 airplanes of U.S. registry would be affected by this proposed AD.

The new inspection method proposed by this supplemental NPRM would not add any new additional economic burden on affected operators, other than, for certain airplanes, the costs that are associated with the initial inspection being required earlier than specified in the original NPRM.

It would take approximately 2 work hours per airplane (1 work hour per side) to accomplish the proposed ultrasonic inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed inspection on U.S. operators is estimated to be $4,200, or $120 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 95–NM–150–AD.

Applicability: All Model A300–600 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously. To detect and correct fatigue cracking on the forward fittings in the radius of frame 40 adjacent to the tension bolts in the center section of the wings, which could result in reduced structural integrity of the wings, accomplish the following:

(a) Perform an ultrasonic inspection to detect cracking on the forward fittings in the

radius of frame 40 adjacent to the tension bolts in the center section of the wings, in accordance with Airbus Service Bulletin A300–57–6062, Revision 02, dated January 29, 1997, at the applicable time specified in either paragraph (a)(1) or (a)(2) of this AD.

(1) For airplanes that have accumulated fewer than 9,100 total landings or 22,300 total flight hours as of the effective date of this AD: Inspect at the later of the times specified in either paragraph (a)(1)(i) or (a)(1)(ii) of this AD.

(i) Prior to the accumulation of 7,250 total landings or 17,700 total flight hours, whichever occurs first.

(ii) Within 1,500 landings after the effective date of this AD.

(2) For airplanes that have accumulated 9,100 total landings or more and 22,300 total flight hours or more as of the effective date of this AD: Inspect within 750 landings after the effective date of this AD.

Note 2: Inspections that were accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A300–57–6062, Revision 1, dated July 23, 1995, are considered acceptable for compliance with paragraph (a) of this AD.

(b) If no crack is detected during the inspection required by paragraph (a) of this AD, repeat the ultrasonic inspection required by that paragraph thereafter at intervals not to exceed 6,500 landings or 16,000 flight hours, whichever occurs first; in accordance with Airbus Service Bulletin A300–57–6062, Revision 02, dated January 29, 1997.

(c) If any crack is detected during any inspection required by paragraph (a) or (b) of this AD, prior to further flight, install an access door, and perform an eddy current inspection to confirm the presence of a crack; in accordance with Airbus Service Bulletin A300–57–6062, Revision 02, dated January 29, 1997. Accomplishment of this eddy current inspection terminates the repetitive inspection requirement of paragraph (b) of this AD.

(1) If no crack is detected during the eddy current inspection, repeat the eddy current inspection, in accordance with the service bulletin, thereafter at intervals not to exceed 6,500 landings or 16,000 flight hours, whichever occurs first.

(2) If any crack is detected during any eddy current inspection performed in accordance with paragraph (c) or (c)(1) of this AD, prior to further flight, blend out the crack and repeat the eddy current inspection in accordance with the service bulletin.

(i) If the eddy current inspection performed after the blend-out shows that the crack has been removed, and if the blend-out is equal to or less than 50 millimeters (mm) long and equal to or less than 2 mm deep, thereafter repeat the eddy current inspection at intervals not to exceed 2,800 landings or 7,000 flight hours, whichever occurs first.

(ii) If the eddy current inspection performed after the blend-out shows that the crack has not been removed, or if the blend-out is more than 50 mm long or more than 2 mm deep, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (or its delegated agent).

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(d)(2) Operators may request an extension to the compliance times of this AD in accordance with the ''adjustment-for-range'' formula found in Paragraph 1.B.(5) of Airbus Service Bulletin A300–57–6062, Revision 02, dated January 29, 1997; and provided in A300–600 Maintenance Review Board, Section 5, Paragraph 5.4. The average flight time per flight cycle (landing) in hours used in this formula should be for an individual airplane. Average flight time for a group of airplanes may be used if all airplanes of the group have flight times differing by no more than 10 percent. If compliance times are based on the average flight time for a group of airplanes, the flight times for individual airplanes of the group must be included for FAA review.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directive 95–063–177(B)R3, dated July 2, 1997.

Issued in Renton, Washington, on November 18, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31323 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act (''Appliance Labeling Rule'')

AGENCY: Federal Trade Commission.

ACTION: Request for public comments on proposed conditional exemption.

SUMMARY: The Federal Trade Commission (''the Commission'') proposes granting manufacturers of residential appliances covered by its Appliance Labeling Rule (''the Rule'') a conditional exemption from the Rule's prohibition against the inclusion of non-required information on the EnergyGuide labels required by the Rule. The exemption would permit appliance manufacturers to place the logo of the Department of Energy's (''DOE'') and Environmental Protection Agency's (''EPA'') joint ''ENERGY STAR'' Program on required EnergyGuides on certain appliances under specific conditions. The Commission seeks comment on its proposal to grant this conditional exemption. The Commission also proposes a non-substantive amendment to the Rule to include ''Federal Trade Commission'' on all EnergyGuide labels so consumers and others will be clear as to the identity of the agency with the authority to enforce the Rule.

DATES: Written comments will be accepted until January 8, 1999.

ADDRESSES: Written comments should be directed to: Secretary, Federal Trade Commission, Room H–159, Sixth St. and Pennsylvania Ave., NW, Washington, D.C. 20580. Comments about this conditional exemption to the Appliance Labeling Rule should be identified as: ''Conditional exemption for ENERGY STAR, 16 CFR Part 305—Comment.''

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, Division of Enforcement, Rm 4616, Federal Trade Commission, Washington, D.C. 20580 (202–326–3035).

SUPPLEMENTARY INFORMATION:

I. Background

A. The Commission's Appliance Labeling Rule

The Commission issued the Appliance Labeling Rule, 44 FR 66466 (Nov. 19, 1979), pursuant to a directive in section 324 of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6294 (''EPCA'')). The Rule requires manufacturers to disclose energy information about certain major household appliances (''covered appliances'') to enable consumers purchasing appliances to compare the energy use or efficiency of competing models. The Rule initially applied to eight appliance categories: refrigerators, refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners, and furnaces. Subsequently, the Commission expanded the Rule's coverage five times: in 1987 (central air conditioners, heat pumps, and certain new types of furnaces); 1989 (fluorescent lamp ballasts); 1993 (certain plumbing products); and twice in 1994 (certain lighting products, and pool heaters and certain other types of water heaters).

Manufacturers of all covered appliances must disclose specific energy consumption or efficiency information at the point of sale in the form of an EnergyGuide label that is affixed to the covered product.[1] Manufacturers must derive this information from standardized tests that EPCA directs DOE to develop.[2] Required labels for appliances and required fact sheets for heating and cooling equipment must include an energy consumption or efficiency disclosure and a ''range of comparability'' that shows the highest and lowest energy consumption or efficiencies for all similar appliance models. Labels for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, water heaters, and room air conditioners also must contain a secondary disclosure of estimated annual operating cost based on a specified national average cost for the fuel the appliances use. The Rule prescribes specifications for the size and colors of the EnergyGuides and for the size and style of the type to be used in the required disclosures. Sample labels appear as appendices to the Rule. The Rule also prohibits the inclusion of non-required information on the EnergyGuide to ensure that such information does not detract from the required information:

No marks or information other than that specified in this part shall appear on or directly adjoining this label, except a part or publication number identification may be included on this label, as desired by the manufacturer, and the energy use disclosure labels required by the governments of Canada or Mexico may appear directly adjoining this label, as desired by the manufacturer. * * *[3] 16 CFR 305.11(a)(5)(i)(K).

DOE and EPA staff (informally) and an appliance manufacturer (the Maytag Company) have requested that the Commission grant a conditional exemption from this prohibition against non-required information that would allow the placement of the DOE/EPA ENERGY STAR logo on the EnergyGuides on qualifying appliances.

B. The ENERGY STAR Program

1. Description of the Program

Section 127 of the Energy Policy Act of 1992[4] directed DOE, in conjunction with EPA, utilities, and appliance manufacturers, to submit a report to the Congress assessing the potential for the development and commercialization of appliances that are substantially more efficient than required by state or federal law,[5] and that are likely to be cost-effective for consumers. The appliances contemplated in the directive include those covered by the Commission's Appliance Labeling Rule. The report, which DOE submitted to Congress in April, 1995, concluded in part that the involvement of the federal government in ''market transformation'' programs could have a positive effect on consumer purchasing decisions regarding higher efficiency products.

Following the report, DOE began to develop a program—originally called the ENERGY SAVER Program—to promote high efficiency household appliances and water heaters in the U.S. marketplace. Concurrently, EPA was developing a similar program—the ENERGY STAR Program—in response to a directive in section 103(g) of the Clean Air Act, 42 U.S.C. 7403(g), that encompassed home heating and cooling equipment (''HVAC equipment''). EPA also has developed ENERGY STAR Programs for lighting products, consumer electronics, office equipment, and home insulation products. Ultimately, the two programs for appliances and HVAC equipment were merged into a single program under the ENERGY STAR name. An ENERGY STAR logo can be used by Program participants in connection with qualifying products directly on the product itself or on an ENERGY STAR label or fact sheet associated with or attached to the product or used in promotional materials or advertising. The logo indicates significantly better energy performance than some specified norm (DOE's minimum efficiency standards, in the case of appliances and HVAC equipment), or indicates the incorporation of a specific energy saving feature on the product.

The Program is a partnership among DOE, EPA, product manufacturers, major national, regional, and local retailers, utilities, state energy offices, industry trade associations and the financial community. The Program's intent is to increase consumer interest in purchasing highly efficient appliances and heating and cooling equipment (as well as other building products) through promotional programs (including national and regional advertising), lower interest financing, product labeling, sales training, and consumer education.

The appliance products that are (or will be) included in DOE's component of the Program are: refrigerator-freezers, dishwashers, clothes washers, room air conditioners, and water heaters. HVAC equipment has been included since 1995 in EPA's earlier version of the ENERGY STAR Program, and there is already a mechanism in place for designating qualifying HVAC products by means of separate labels, as well as in advertising and promotional materials. EPA staff is joining in the instant request for Commission permission for the HVAC equipment manufacturers participating in the Program to include the ENERGY STAR logo on the EnergyGuides on their qualifying products.

DOE and EPA have established qualifying energy consumption criteria that specific appliance and HVAC equipment categories must meet to be included in the ENERGY STAR Program.[6] To establish its criteria, DOE held public workshops in several cities, and solicited comments from all segments of the public. DOE received comments from appliance manufacturers and retailers, utilities, state energy agencies, public interest groups, and representatives of the Canadian government.

EPA held approximately 30 public meetings, primarily at EPA Headquarters in Washington, DC, mostly in late 1995 and early 1996.

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[1] The information on the EnergyGuide also must appear in catalogs from which covered products can be ordered. Manufacturers of furnaces, central air conditioners, and heat pumps also must either provide fact sheets showing additional cost information or be listed in an industry directory that shows the cost information for their products.

[2] Section 323 of EPCA (42 U.S.C. 6293) directs DOE to develop test procedures to be used by appliance manufactures to determine their products' compliance with DOE's standards. Section 324(c)(1)(A) of EPCA (42 U.S.C. 6294(c)(1)(A)) states that the Commission's Rule must require disclosure on labels of energy use information derived from the DOE test procedures.

[3] The language in this section pertains to labels for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, and room air conditioners. Identical language appears in two other sections relating to labels for furnaces and pool heaters, 16 CFR 305.11(a)(5)(ii)(I), and central air conditioners and heat pumps, 16 CFR 305.11(a)(5)(iii)(H)(1). The statute itself (EPCA) does not prohibit the inclusion of non-Rule-required information on the Energy Guide.

[4] Pub. L. No. 102–486, 106 Stat. 2776, 2835 (Oct. 24, 1992).

[5] In this context, ''federal law'' includes DOE's minimum efficiency standards for appliances, which Congress directed DOE to issue in section 325 of EPCA (42 U.S.C. 6295). As amended, the statute itself set the initial national energy efficiency standards for appliances and established a schedule for regular DOE review of the standards for each product category. The statute directed DOE to design these standards to achieve the maximum improvement in energy efficiency for residential appliances that is technologically feasible and economically justified. 42 U.S.C. 6265(o)(2). In accordance with the statutory directive, DOE regularly reviews the established standards and publishes new standards where appropriate. DOE's rules relating to standards, like its test procedure rules, are codified at 10 CFR Part 430 (1997).

[6] A discussion of DOE's criteria, together with lists of qualifying products, can be found on DOE's ENERGY STAR website, at <WWW.ENERGYSTAR.GOV>. EPA maintains a similar website at <WWW.EPA.GOV/ENERGYSTAR.HTML>, which is hyperlinked to DOE's site.

Attending stakeholders included manufacturers, public interest groups, industry trade associations, and utility groups.

The results of these processes as they apply to specific appliance categories are summarized below:

To be included in the Program:

A refrigerator-freezer must have an annual electrical consumption (as determined by the DOE test for that category of products) that is at least 20 percent less than the maximum energy consumption permitted by DOE's standard for refrigerator-freezers;

A dishwasher must have an Energy Factor (''EF'') of 0.52 or greater.[7] An EF of 0.52 represents a 13% improvement in efficiency over DOE's minimum EF of 0.46;

A standard clothes washer (top or front loading) must have an EF of 2.5 or greater.[8] An EF of 2.5 is an approximately 112% efficiency improvement over DOE's minimum EF of 1.18. The relatively high percentage of improvement over the standard is due to the existence of a new technology in the clothes washer industry;

A room air conditioner must be rated with an Energy Efficiency Ratio (''EER'') that is 15% greater than the DOE minimum EER for the type and size of that unit.[9]

A gas- or oil-fueled furnace must be rated with an Annual Fuel Utilization Efficiency (''AFUE'') that is 90 or better; a gas- or oil-fueled boiler must be rated with an AFUE that is 85 or better.[10]

A central air conditioner or the cooling function of an air-source heat pump must be rated with a Seasonal Energy Efficiency Ratio (''SEER'') of 12 or better; the heating function of an air-source heat pump must be rated with a Heating Seasonal Performance Factor (''HSPF'') of 7 or higher.[11]

To date, DOE has not finished developing the water heater component of the Program.

As discussed in section II., below, the conditional exemption from the Rule's non-required information prohibition would be granted to Program participants for those appliances that meet DOE's and EPA's criteria.

2. The ENERGY STAR Logo

EPA owns the ENERGY STAR logo and name and has licensed them to DOE. As a result of this joint partnership, the initials of both agencies appear on the logo. DOE and EPA allow the use of the ENERGY STAR logo by retailers, utilities, manufacturers and other organizations participating in their respective programs under clearly established guidelines that are set out in a memorandum of understanding (''MOU'') that each participant must sign. Participants that have signed an MOU are then ''partners.'' Under these MOUs, partners may associate the ENERGY STAR logo and name with specific products that DOE and EPA have determined meet the Program's requirements.[12]

Program partners may use the logo as a product label and in catalogs and advertising to designate specific products that are ENERGY STAR qualifying products. A sample EnergyGuide with an ENERGY STAR logo placed in accordance with the conditions the Commission is proposing appears at the end of Section II., below. Partners also may display the logo when describing one or more of the ENERGY STAR labeling programs, such as in special educational brochures, newsletters, or annual reports. Retailer and utility partners are allowed to include the logo in general educational or promotional materials, such as utility bill stuffers, newsletters, or annual reports.

3. The Request for a Conditional Exemption

DOE staff has conducted an inquiry into the appliance manufacturing and marketing industry's receptivity to the use of the ENERGY STAR logo on the EnergyGuides required on appliances. According to DOE staff, the conditional exemption they and Maytag have requested would result in a single, combined label (an ''augmented'' EnergyGuide) that would be preferable to separate EnergyGuide and ENERGY STAR labels for several reasons.

Currently, retailers apply separate ENERGY STAR labels on qualifying appliances at each store site. The extent and accuracy of label placement is then monitored by participating utilities and DOE contractors. From its public workshops and the comments they generated, DOE has learned that many manufacturers, retailers and consumers would prefer a single, augmented label. Some manufacturers favor an augmented label because it would reduce their costs. In addition, Maytag stated that the augmented EnergyGuide would allow manufacturers ''to assure proper identification of qualifying models, [which] is not as easily controlled at the retailer level.'' According to DOE, retailers believe that the augmented label would be less confusing to consumers than multiple labels relating to energy use, that an augmented EnergyGuide label could build upon the broad ''brand recognition'' achieved by the Commission's label, and that an augmented label would make it easier for consumers to distinguish efficient products. DOE staff believe that the efforts of the Commission, EPA, and DOE to provide consumer educational materials explaining a new augmented label, coupled with training for appliance salespeople, would lead to broader overall consumer awareness of the differences in energy consumption among competing appliances, and thus would result in more informed consumer decision-making. DOE staff also has suggested that the augmented label could be used by utilities in connection with their efforts to support demand-side load reduction objectives through the use of incentives to consumers.

II. Discussion

A. The Commission's Basis for Proposing a Conditional Exemption

The Commission believes that a conditional exemption to allow manufacturers to place the ENERGY STAR logo on EnergyGuides affixed to qualified products is appropriate for the reasons advanced in favor of the augmented EnergyGuide in the discussion at I.B.3., above. Although the ENERGY STAR logo can be affixed to appliances as a separate label without the conditional exemption to the Rule, and is in fact already appearing on some qualifying appliances and most

[7] Under the DOE tests, an appliance's EF is a measure of the useful output of its services divided by the energy input.

[8] To date, DOE has included only ''standard'' clothes washers in the Program because most of the models sold fall within that subcategory. For purposes of its minimum efficiency standards program, DOE's clothes washer category also includes a ''compact'' subcategory. The criterion for the distinction is tub capacity.

[9] The EER is the efficiency measurement for room air conditioners specified in the DOE test procedure for these products. Only units without reverse cycle (heating function) and with louvered sides can currently qualify for the Program.

[10] The AFUE is the efficiency measurement for forced air furnaces and for boilers that is specified in the DOE test procedure for these products.

[11] The SEER is the efficiency measurements for central air conditioners and the cooling function of air-source heat pumps specified in the DOE test procedure for these products; the HSPF is the DOE test efficiency measurement for the heating function of air-source heat pumps.

[12] The MOUs provide that each partner is responsible for using the logo in accordance with the terms of the MOU. Partners must make the logo use guidelines available to other entities, such as advertising agencies, that prepare materials on the partner's behalf. Non-partners must seek specific approval from either EPA or DOE for each specific use of the logo. Under no circumstances may the logo or name be used in a manner that would imply EPA or DOE endorsement. DOE and EPA are responsible for overseeing proper use of the logo and name.

qualifying HVAC equipment covered by the Rule, the Commission agrees with DOE staff and Maytag that an augmented label is likely to reduce manufacturers' labeling and monitoring costs. Use of an augmented label may also reduce the likelihood of mislabeling. The logo's highlighting of efficient appliances would complement the Rule's objective of providing consumers with energy efficiency and consumption information to enable them to consider these factors when purchasing appliances. To the extent that consumers are unfamiliar with the meaning of the ENERGY STAR logo, its placement in close conjunction with the descriptive information already on the EnergyGuide label may provide a context that better ensures consumer understanding of the logo than if it were physically separated from that information. In addition, the ENERGY STAR logo, and the brief explanatory message that the Commission proposes accompany it (see discussion in II.B., below), also may enhance consumer understanding of the energy efficiency information that already appears on the EnergyGuide. Finally, the augmented label may contribute to the overall aim of conserving energy that underlies EPCA, the statutory basis for both the EnergyGuide and DOE's component of the ENERGY STAR Program.

B. The Terms of the Proposed Conditional Exemption

The Commission is proposing to grant those manufacturers participating in the ENERGY STAR Program a conditional exemption from the Rule's prohibition against placing ''information other than that specified'' by the Rule on the EnergyGuides they attach to qualifying products.[13] The Commission would base this exemption on several conditions. First, the ENERGY STAR logo would be permitted on the EnergyGuides of only those covered appliances and HVAC equipment that meet the ENERGY STAR Program qualification criteria that are current at the time the products are labeled. Second, only manufacturers that have signed a MOU with DOE or EPA would be permitted to affix the augmented labels to qualifying appliances. Third, to ensure that the ENERGY STAR logo is permanently placed in the proper position on the augmented EnergyGuide label, manufacturers that choose to avail themselves of the conditional exemption would be required to print the ENERGY STAR logo on EnergyGuides for qualified products as part of the usual label printing process; that is, manufacturers (or distributors or retailers) would not be permitted to apply a separate logo onto already finished labels subsequent to the time a product is labeled. Fourth, manufacturers would have to draft the logo in conformance with certain technical specifications relating to its appearance, placement on the EnergyGuide, and size. Specifically, the logo would have to appear above the comparability bar in the box that contains the applicable range of comparability. The precise location of the logo would vary depending on where the caret indicating the position of the labeled model on the scale appears (see the sample label). The required dimensions of the logo would be no more than one and one-eighth inches (3 cm.) in width and no more than three-quarters of an inch (2 cm.) in height. Manufacturers would be prohibited from placing the logo in a way that would obscure, detract from, alter the dimensions of, or touch any element of the label, which in all other respects would have to conform to the requirements of the Commission's Rule. The ENERGY STAR logo would be in process black ink to match the print specifications for the EnergyGuide. The background would remain in process yellow to match the rest of the label.

Finally, the Commission also proposes requiring that manufacturers availing themselves of the conditional exemption add a sentence that explains the significance of the ENERGY STAR logo. Although DOE and EPA have made, and continue to make, a significant effort to disseminate information concerning the Program in general and the meaning of the logo specifically, the Commission is concerned that the addition of the logo to the EnergyGuide without some explanation of its meaning on the face of the label itself may not be meaningful to consumers. Because space is at a premium on the EnergyGuide, the Commission proposes that manufacturers include a brief explanatory sentence below the comparability bar between the ''least'' and ''most'' numbers in eight-point Helvetica Cond. Black typeface: ''ENERGY STAR [product type(s)] use at least ____% less energy annually than the Federal Maximum.'' or: ''ENERGY STAR [product type(s)] are at least ____% more efficient than the Federal Minimum.'' or: ''ENERGY STAR [product type(s)] must be rated with a [type of efficiency rating] of [rating] or higher.'' The specific wording of this statement would depend on the product category.

Thus, the text on a label for a qualifying refrigerator-freezer would read:

ENERGY STAR refrigerators use at least 20% less energy annually than the Federal Maximum.

Or, the text on a label for a qualifying dishwasher would read:

ENERGY STAR dishwashers are at least 13% more efficient than the Federal Minimum.

Or, the text on a label for a qualifying central air conditioner would read:

ENERGY STAR central air conditioners must be rated with a SEER of 12 or higher.[14]

In addition to proposing the conditional exemption, the Commission proposes amending the Rule so the Federal Trade Commission is clearly identified as the government entity that requires manufacturers to affix the label to their appliances. This amendment would eliminate confusion if the Commission grants the proposed conditional exemption and the identifying initials of DOE and EPA appear on the labels of appliances that qualify for the ENERGY STAR Program. The proposal would be to change the sentence at the bottom of the EnergyGuide to read:

Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 CFR Part 305).[15]

Because of the non-substantive nature of this proposal, manufacturers would not have to make the change until their supply of current labels is exhausted or they draft new labels for other reasons, such as a change in the ranges of comparability. The proposed language is included on the sample EnergyGuide.

Sample EnergyGuide with ENERGY STAR Logo:

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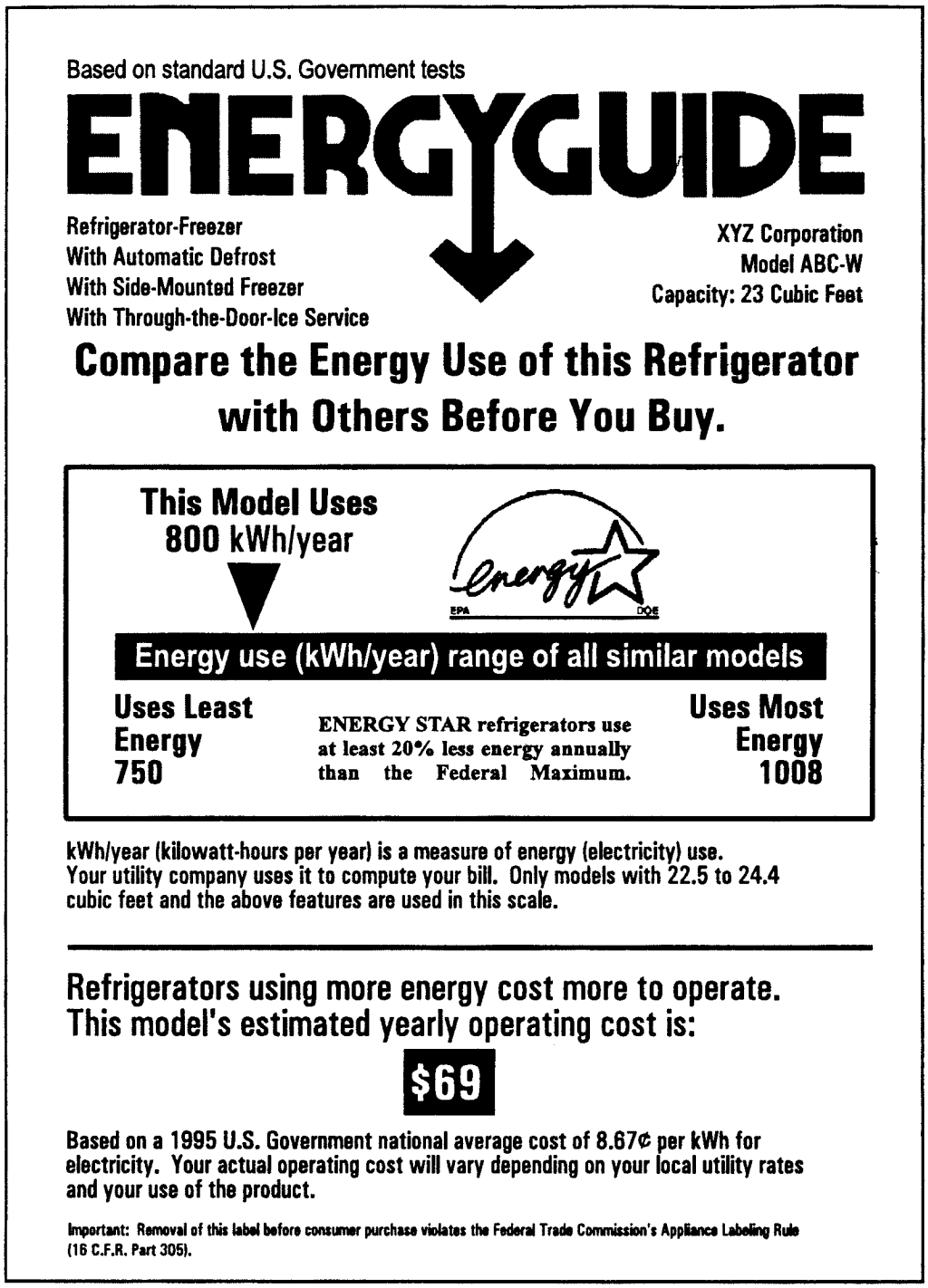
[13] For the information and convenience of those covered by the Rule who may wish to avail themselves of the exemption, the Commission also proposes adding a new section to the Rule—305.19 Exemptions. This section would codify the conditional exemption proposed today and provide a section for codification of any future exemptions.

[14] The ''SEER'' descriptor (''seasonal energy efficiency ratio'') is defined on the EnergyGuide as ''* * * the measure of energy efficiency for central air conditioners.'' The label also states: ''Central air conditioners with higher SEERs are more energy efficient.''

[15] Currently, this disclosure reads, ''Important: Removal of this label before consumer purchase is a violation of Federal law (42 U.S.C. 6302).''



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III. Request for Comment

A. General Information for Commenters

The Commission requests interested persons to submit written comments on any issue of fact, law or policy that may bear upon the proposed conditional exemption. Although the Commission welcomes comments on any aspect of the proposed conditional exemption, the Commission is particularly interested in comments on the questions listed below. All written comments should state clearly the question or issue, or the specific condition, that the commenter wishes to address.

The Commission requests that commenters provide representative factual data in support of their comments. Individual firms' experiences are relevant to the extent they typify industry experience in general or the experience of similar-sized firms. Comments opposing the proposed conditional exemption or any individual condition should, if possible, suggest specific alternatives. Proposals for alternative conditions should include reasons and data that indicate why the alternatives would better serve the requirements of the Appliance Labeling Rule. Comments should be supported by a full discussion of all the relevant facts and/or be based on firsthand knowledge, personal experience, or general understanding of the particular issues addressed.

The request from Maytag and written comments submitted will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations on normal business days from 8:30 a.m. to 5:00 p.m. at the Federal Trade Commission, 6th St. and Pennsylvania Ave., N.W., Room 130, Washington, D.C. 20580.

B. Questions for Comment

Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission's consideration of the proposed exemption from the Rule's prohibition against the inclusion of non-required information on EnergyGuides for those manufacturers in DOE/EPA's ENERGY STAR Program that wish to identify products that qualify for inclusion in the Program. The exemption would be conditioned on placement, by such manufacturers, of the DOE/EPA ENERGY STAR logo and explanatory statement on the EnergyGuides affixed to the qualifying products in the manner and form detailed in the discussion in Section II.B., above.

The Commission is particularly interested in comments addressing the following questions and issues:

1. Are the conditions under which the Commission proposes the exemption, including the size and placement of the logo on the EnergyGuide, appropriate? Are there additional, or different, conditions that also would be appropriate?

2. Should the exemption be limited to manufacturers who are ''partners'' in the ENERGY STAR program, or should it include non-partners who have obtained specific approval from either DOE or EPA for a particular use of the ENERGY STAR logo?

3. What is the most cost-effective method (e.g., requiring that manufacturers print the ENERGY STAR logo on EnergyGuides) of assuring that the ENERGY STAR logo will appear on EnergyGuides?

4. a. Do consumers need the proposed explanatory statement to understand why the ENERGY STAR logo is on the EnergyGuide?

b. Are there ways to word the statement, or ways to place the statement on the EnergyGuide, that would better explain the meaning of the ENERGY STAR logo?

c. Would it be clearer to consumers that the proposed explanatory statement on the EnergyGuide label refers to the ENERGY STAR logo if the statement and the logo were both in a color of ink (for example, blue or green) that is different from the black ink on the rest of the EnergyGuide?

d. How would the proposed explanatory statement affect consumer understanding of the other information on the EnergyGuide?

5. What would be the economic impact on manufacturers of the proposed exemption and each of the proposed conditions for use of the exemption?

6. What would be the benefits of the proposed conditional exemption? Who would receive those benefits?

7. What would be the benefits and economic impact of the proposed exemption and each of the proposed conditions on small businesses?

8. Do the ENERGY STAR logo and its promotional materials convey accurate information to consumers, especially with regard to the overall cost over time of purchasing and operating appliances that qualify for the ENERGY STAR logo versus those that do not?

The Commission notes that the ENERGY STAR Program itself was developed by EPA and DOE and that the Commission does not have the authority to modify the terms of that Program. Thus, this proceeding is not an appropriate forum for comments concerning the ENERGY STAR Program, with the exception of comments responding specifically to question 8, above. This proceeding is limited to exploring the Commission's proposal to permit the inclusion of the ENERGY STAR logo on the EnergyGuides required by the Commission's Rule.

IV. Regulatory Flexibility Act

This notice does not contain a regulatory analysis under the Regulatory Flexibility Act (''RFA''), 5 U.S.C. 603–604, because the Commission believes that the conditional exemption, if adopted, would not have ''a significant economic impact on a substantial number of small entities,'' 5 U.S.C. 605. The Rule prohibits the inclusion of non-required information on the EnergyGuide in order to ensure that such information does not detract from the required information. The conditional exemption would not impose any new requirements on manufacturers of appliances and HVAC equipment. Instead, it would allow them the option, under certain conditions, of voluntarily including the DOE/EPA ENERGY STAR logo on EnergyGuides affixed to products that qualify for inclusion in the ENERGY STAR Program. The Commission, therefore, believes that the impact of the conditional exemption on all entities within the affected industry, if any, would be de minimis.

Similarly, manufacturers would not have to comply with the proposed amendment to require different language on the EnergyGuide that identifies the Commission as the agency with enforcement authority for the Rule until they were required to print new labels for other reasons, so the Commission believes that the impact of the proposed amendment on all entities within the affected industry, if any, would be de minimis.

In light of the above, the Commission certifies, pursuant to section 605 of the RFA, 5 U.S.C. 605, that the proposed conditional exemption would not, if granted, have a significant impact on a substantial number of small entities. To ensure that no substantial economic impact is being overlooked, however, the Commission solicits comments concerning the effects of the proposed conditional exemption, including any benefits and burdens on manufacturers or consumers and the extent of those benefits and burdens, beyond those imposed or conferred by the current Rule, that the conditional exemption would have on manufacturers, retailers, or other sellers. The Commission is particularly interested in comments

regarding the effects of the conditional exemption on small businesses. After reviewing any comments received, the Commission will determine whether it is necessary to prepare a final regulatory flexibility analysis if it determines to grant the conditional exemption.

V. Paperwork Reduction Act

The Paperwork Reduction Act (''PRA''), 44 U.S.C. 3501 *et seq.*, requires government agencies, before promulgating rules or other regulations that require ''collections of information'' (i.e., recordkeeping, reporting, or third-party disclosure requirements), to obtain approval from the Office of Management and Budget (''OMB''), 44 U.S.C. 3502. The Commission currently has OMB clearance for the Rule's information collection requirements (OMB No. 3084–0069). The conditional exemption would not impose any new information collection requirements. To ensure that no additional burden has been overlooked, however, the Commission seeks public comment on what, if any, additional information collection burden the proposed conditional exemption may impose.

VI. Communications by Outside Parties to Commissioners or Their Advisors

Pursuant to Rule 1.18(c) of the Commission's Rules of Practice, 16 CFR 1.18(c) (1997), communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor during the course of this rulemaking shall be subject to the following treatment. Written communications, including written communications from members of Congress, shall be forwarded promptly to the Secretary for placement on the public record. Oral communications, not including oral communications from members of Congress, are permitted only when such oral communications are transcribed verbatim or summarized, at the discretion of the Commissioner or Commissioner's advisor to whom such oral communications are made, and are promptly placed on the public record, together with any written communications and summaries of any oral communications relating to such oral communications. Oral communications from members of Congress shall be transcribed or summarized, at the discretion of the Commissioner or Commissioner's advisor to whom such oral communications are made, and promptly placed on the public record, together with any written communications and summaries of any oral communications relating to such oral communications.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 6294.

In consideration of the foregoing, the Commission proposes to amend part 305 of title 16, chapter I, subchapter C of the Code of Federal Regulations, as follows:

PART 305—RULE CONCERNING DISCLOSURES REGARDING ENERGY CONSUMPTION AND WATER USE OF CERTAIN HOME APPLIANCE AND OTHER PRODUCTS REQUIRED UNDER THE ENERGY POLICY AND CONSERVATION ACT (''APPLIANCE LABELING RULE'')

1. The authority for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

2. Section 305.11(a)(5)(i)(I) is revised to read as follows:

§ 305.11 Labeling for covered products.

(a) * * *
(5) * * *
(i) * * *
(I) The following statement shall appear at the bottom of the label:

Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 CFR Part 305).

* * * * *

3. Section 305.11(a)(5)(ii)(H) is revised to read as follows:

§ 305.11 Labeling for covered products.

(a) * * *
(5) * * *
(ii) * * *
(H) The following statement shall appear at the bottom of the label:

Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 CFR Part 305).

* * * * *

4. Section 305.11(a)(5)(iii)(H) is revised to read as follows:

§ 305.11 Labeling for covered products.

(a) * * *
(5) * * *
(iii) * * *
(H) The following statement shall appear at the bottom of the label:

Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 CFR Part 305).

* * * * *

5. Section 305.19 is added to read as follows:

§ 305.19 Exemptions.

The Commission has exempted manufacturers, private labelers, distributors, and/or retailers in some instances from specific requirements of the Rule in this part. These exemptions are listed in this section. In some circumstances, use of the exemptions is conditioned on alternative performance by manufacturers, private labelers, distributors, and/or retailers.

(a) Limited conditional exemption for manufacturers from the prohibition against the inclusion of non-required information on the label of covered products that qualify for inclusion in the ENERGY STAR Program maintained by the Department of Energy (''DOE'') and the Environmental Protection Agency (''EPA''). Those manufacturers participating in the DOE/EPA ENERGY STAR Program are granted a conditional exemption from the prohibition against placing ''information other than that specified'' by the Rule on the EnergyGuides they attach to their qualifying products. This exemption is based on several conditions:

(1) The ENERGY STAR logo is permitted on the EnergyGuides of only those covered products that meet the ENERGY STAR Program qualification criteria that are current at the time the products are labeled.

(2) Only manufacturers that have signed a Memorandum of Understanding with DOE or EPA may add the ENERGY STAR logo to labels on qualifying covered products.

(3) Manufacturers that choose to avail themselves of the conditional exemption must print the ENERGY STAR logo on EnergyGuides for qualified products as part of the usual label printing process; that is, manufacturers (or distributors or retailers) are not permitted to apply a separate logo onto already finished labels subsequent to the time a product is labeled.

(4) Manufacturers must place the logo on the EnergyGuide above the comparability bar in the box that contains the applicable range of comparability. The precise location of the logo will vary depending on where the caret indicating the position of the labeled model on the scale appears (see sample label 10 in appendix L to this part). The required dimensions of the logo must be one and one-eighth inches (3 cm.) in width and three-quarters of an inch (2 cm.) in height. Manufacturers are prohibited from placing the logo in a way that would obscure, detract from, alter the dimensions of, or touch any

element of the EnergyGuide, which in all other respects must conform to the requirements of this part. The ENERGY STAR logo must be in process black ink to match the print specifications for the EnergyGuide. The background must remain in process yellow to match the rest of the label.

(5) Manufacturers must add a sentence that explains the significance of the ENERGY STAR logo below the comparability bar between the ''least'' and ''most'' numbers in eight-point Helvetica Cond. Black typeface. The sentence must read: ''ENERGY STAR [product type(s)] use at least ____% less energy annually than the Federal Maximum.'' or: ''ENERGY STAR [product type(s)] are at least ____% more efficient than the Federal Minimum.'' or: ''ENERGY STAR [product type(s)] must be rated with a [type of efficiency rating] of [rating] or higher.'' The specific wording of this statement will depend on the product category and the ENERGY STAR Program criteria in effect at the time of the labeled product's manufacture and labeling.

(b) *Examples.* (1) The text on a label for a qualifying refrigerator-freezer must read:

ENERGY STAR refrigerators use at least 20% less energy annually than the Federal Maximum.

(2) The text on a label for a qualifying clothes washer must read:

ENERGY STAR clothes washers are at least 112% more efficient than the Federal Minimum.

(3) The text on a label for a qualifying dishwasher must read:

ENERGY STAR dishwashers are at least 13% more efficient than the Federal Minimum.

(4) The text on a label for a qualifying room air conditioner must read:

ENERGY STAR room air conditioners are at least 15% more efficient than the Federal Minimum.

(5) The text on a label for a qualifying central air conditioner must read:

ENERGY STAR central air conditioners must be rated with a SEER of 12 or higher.

(6) The text on a label for a qualifying heat pump must read:

ENERGY STAR heat pumps must be rated with a HSPF of 7 or higher (for heating) and a SEER of 12 or higher (for cooling).

(7) The text on a label for a qualifying gas-fired furnace must read:

ENERGY STAR gas furnaces must be rated with an AFUE of 90 or higher.

6. Appendix L is amended by the addition of a new Sample Label 10 (which is an EnergyGuide with the ENERGY STAR logo) as follows:

Appendix L to Part 305—Sample Labels

* * * * *

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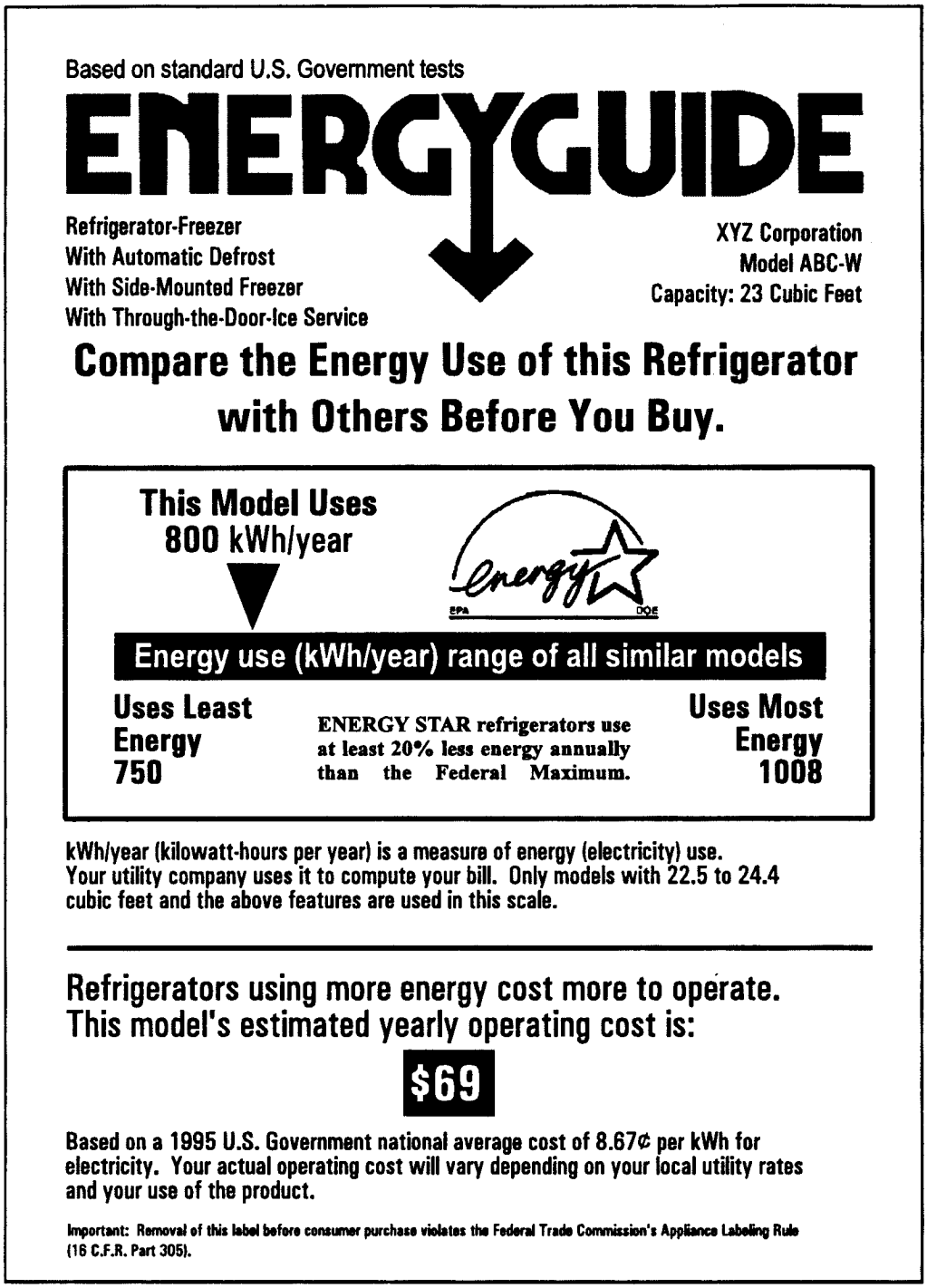

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Sample Label 10

* * * * *

7. Prototype Labels 1–5 and Sample Labels 1–9 of APPENDIX L are amended by the deletion of the words ''Important: Removal of this label before consumer purchase is a violation of Federal law (42 U.S.C. 6302).'' at the bottom of each label and the addition, in their place and in the same typeface and size, of the following words: Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 CFR Part 305).

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–31202 Filed 11–23–98; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. 98N–0496]

RIN 0910–AB24

Import for Export; Reporting and Recordkeeping Requirements for Unapproved or Violative Products Imported for Further Processing or Incorporation and Subsequent Export

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing reporting and recordkeeping regulations to implement certain sections of the Federal Food, Drug, and Cosmetic Act (the act) as amended by the FDA Export Reform and Enhancement Act of 1996. The proposed rule would require an importer to report to FDA each time it imports an unapproved or otherwise violative article that is to be exported after further processing or incorporation into another product in the United States and to keep records to ensure that the article is so processed or incorporated and then exported, and that any portion of the import that is not exported is destroyed.

DATES: Submit written comments by February 8, 1999. Written comments on the information collection requirements should be submitted by December 24, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., Washington, DC 20503. Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT:

For general information: Marvin A. Blumberg, Division of Import Operations and Policy (HFC–171), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6553.

For information concerning blood products: Kimberly A. Cressotti, Division of Case Management (HFM–610), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6201.

SUPPLEMENTARY INFORMATION:

I. Background

The FDA Export Reform and Enhancement Act of 1996 (Pub. L. 104–134, amended by Pub. L. 104–180, August 6, 1996) became law on April 26, 1996. One provision of the new law, now codified at section 801(d)(3) of the act (21 U.S.C 381 (d)(3)), allows importation of any component of a drug, component part or accessory of a device, or other article of device requiring further processing, and any food or color additive, or dietary supplement, if it is to be further processed or incorporated into a product that is to be exported from the United States by the initial owner or consignee in accordance with section 801(e) or 802 of the act (21 U.S.C 382), or section 351(h) of the PHS Act (42 U.S.C. 262 (h)). (For purposes of section 801(d) of the act, FDA interprets the term ''component'' broadly to include anything used in, or in the manufacture of, a drug, biologic, or device, as well as a finished final product that will be further processed in the United States. Thus, for example, the term includes bulk drugs, unapproved foreign versions of drugs approved for use in the United States, active and inactive ingredients of a drug or biologic, pieces of a device, and completed devices.) Under section 801(d)(3) of the act, the initial owner or consignee must submit a statement regarding the imported article to FDA at the time of initial importation. Any component of a drug; any component, part, article, or accessory of a device; any food additive, color additive; or any dietary supplement imported under section 801(d) of the act that is not incorporated or further processed by the initial owner or consignee must be destroyed or exported (see section 801(d)(3)(C) of the act). Section 801(d)(3)(B) of the act further requires the initial owner or consignee to maintain records identifying the use and exportation or disposition of the imported article, including portions that were destroyed, and, upon request from FDA, to submit a report that accounts for the exportation or disposition of the imported article and the manner in which the initial owner or consignee complied with the requirements in section 801(d) of the act.

This provision of the act is generally known as the ''import-for-export'' provision.

Another new provision, now codified at section 801(d)(4) of the act, places additional requirements on the import-for-export of blood, blood components, source plasma, source leukocytes, or a component, accessory, or part (hereinafter referred to as ''blood products''), and of tissue and components or parts of tissue. Section 801(d)(4) of the act prohibits the importation of blood products unless they comply with section 351(a) of the PHS Act or FDA permits the importation under FDA-determined appropriate circumstances and conditions. (Section 351(a) of the PHS Act pertains to the licensing of biological products.)

Section 801(d)(4) of the act also prohibits the importation of tissues and their components, under section 801(d)(3) of the act, unless the importation complies with section 361 of the PHS Act (42 U.S.C. 264). Section 361 of the PHS Act authorizes FDA to issue regulations to control communicable disease, and, for human tissues intended for transplantation, these regulations are found at part 1270 (21 CFR part 1270). FDA, therefore, interprets section 801(d)(4) of the act as meaning that a person importing human tissue for transplantation for further processing or incorporation into a product destined for export must comply with part 1270. Under § 1270.42 published in the **Federal Register** of July 29, 1997 (62 FR 40429), the importer of record must notify the director of the FDA district having jurisdiction over the port of entry or notify his or her designee, and the human tissue must be quarantined until released by FDA.

Human tissue intended for transplantation may be imported and further processed or incorporated into other products without meeting the screening and testing requirements of part 1270 if the human tissue is kept in quarantine at all times (see § 1270.3

(definition of ''quarantine'')). However, as indicated in § 1270.31 (62 FR 40429, July 29, 1997), the owner or consignee in the United States must prepare and follow written procedures for designating and identifying quarantined human tissue and preventing infectious disease contamination or cross-contamination during processing.

FDA considers live animal cells, tissues, and organs intended to be transplanted, implanted, or used for ex-vivo perfusion in humans (xenogeneic products) to be biological products. Nonliving animal cells, tissues, and organs intended for transplantation or implantation into humans may be either biological products or devices. Animal cells, tissues, and organs imported into the United States under section 801(d) of the act which FDA considers to be biological products or devices would be expected to comply with proposed § 1.84(b).

All veterinary biologics (e.g., vaccines, bacterins, allergens, antibodies, antitoxins, toxoids, etc.) and animal–origin materials that could represent a disease risk to U.S. livestock, including animal products, by–products, and biological materials that contain or have been in contact with certain organisms or animal materials) are regulated by the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service. An importer must obtain a USDA permit before importing any of these materials.

The proposed rule would establish the requirements for requesting a determination from FDA to allow importation of blood products, and would establish reporting, labeling, and recordkeeping requirements for all imported articles under the import-for-export provision. These would be the minimum requirements necessary to comply with the import-for-export provision in the act and are intended to enable the importer to ensure, and the agency to monitor, that imported substances are further processed or incorporated into one of the specified FDA-regulated products while in the United States, and are then exported or destroyed without entering domestic commerce. Although the act does not define the term ''further processed,'' given the legislative intent to allow manufacturing and processing activities not previously permitted under the act, FDA interprets the term ''further processed'' to cover a wide range of activities, including packaging or labeling of finished products and specialized processing (such as sterilization) of a product. However, the agency does not consider a product to be ''further processed'' if it is merely stored in the United States before being exported elsewhere.

II. Description of the Proposed Rule

A. Request for Determination Regarding the Importation of Blood, Blood Components, Source Plasma, Source Leukocytes, or Their Components, Accessories, or Parts

As stated earlier, section 801(d)(4) of the act prohibits the importation of blood, blood components, source plasma, or source leukocytes, or ''a component, accessory, or part thereof,'' unless they comply with section 351(a) of the PHS Act or meet ''appropriate circumstances and conditions'' as determined by FDA. The agency interprets the phrase concerning compliance with section 351(a) of the PHS Act as requiring products to be licensed, and also interprets section 801(d)(4) of the act to include blood or plasma derivatives or intermediates. With respect to the determination of ''appropriate circumstances and conditions,'' FDA interprets the phrase as applying to unlicensed blood products and will decide on a case-by-case basis whether blood products that do not comply with section 351(a) of the PHS Act should be allowed into the United States under section 801(d)(4) of the act. This decision will be based, in part, on the agency's assessment of the adequacy of the safeguards to prevent diversion into U.S. commerce, contamination of, or commingling with products licensed or approved by FDA for use in the United States.

Consequently, proposed § 1.84(a) would describe the process for requesting a determination that an unlicensed blood product meets the appropriate circumstances and conditions to allow its importation into the United States. Proposed § 1.84(a)(1) would require a person who intends to import an unlicensed blood product into the United States for further processing or incorporation into a product destined for export to request a determination from FDA before importing the blood product. The request, under proposed § 1.84(a)(2), would contain the following:

1. The names and addresses of the foreign manufacturer of the article to be imported and the initial owner or consignee in the United States that would be responsible for the further processing or incorporation of the article into another product;

2. The specific identity of the article to be imported and details as to how it will be further processed or incorporated into a product for export;

3. A description of the standard operating procedures and safeguards that will be used to ensure that the imported articles or products incorporating the imported articles are not diverted to domestic use in the United States and are segregated from, and not comingled with, products or components intended for use in the United States. For example, this may consist of quarantine procedures used for segregating imported blood, blood components, or final products from products intended for use in the United States and validation data for procedures to clean equipment and facilities used for manufacturing both products for use in the United States and for manufacturing products for export;

4. General donor screening documentation or criteria, in English. The request for determination should not include individual donor screening questionnaires;

5. A copy of the product label translated (if necessary) into English (described in greater detail below); and

6. A certification that all blood and blood products will be tested for infectious disease agents such as HIV–1, HIV–2, hepatitis B virus, hepatitis C virus, HTLV–I, HTLV–II, and *Treponema pallidum*. Proposed § 1.84(a) would permit the infectious agent tests to be performed using test kits other than those licensed or approved by FDA; in such cases, a copy of the labeling, including manufacturer's test kit instructions, for the test kit used, translated into English, would be included in the request for determination.

Requests for determination, under proposed § 1.84(a)(3), would be submitted to the Division of Case Management (HFM–610), Center for Biologics Evaluation and Research (CBER). CBER will develop procedures and timeframes for reviewing these requests.

A request for determination would be submitted to and approved by CBER before importation of the first shipment of the unlicensed biological product. Once CBER has approved a request for determination, future shipments of the same product may be imported for export without an additional request for determination so long as the importer, consignee, and all other conditions upon which the determination was based remain unchanged.

Proposed § 1.84(a)(4) would require the initial owner or consignee to maintain records regarding the request for determination and to make those records available to FDA upon request.

Under proposed § 1.84(a)(5), FDA would notify, in writing, the person requesting the determination if the agency grants permission to import the blood product.

These proposed regulations for blood, blood components, source plasma, source leukocytes, or their components, accessories, or parts are intended to help prevent any recurrence of situations in which blood products not approved for use in the United States are used in products that are then distributed into U.S. commerce. In one such case, a manufacturer imported unlicensed source plasma for use in the manufacture of hepatitis test kits, and these kits were later distributed in the United States. Consistent with section 801(d)(4) of the act, the agency is proposing rules to ensure that blood products that are not licensed or approved for use in the United States are not used in products distributed in the United States.

B. Reporting Requirements

As stated earlier, section 801(d)(3)(A) of the act requires the importer to submit, ''at the time of initial importation,'' a statement to the agency indicating that the imported article is intended to be further processed or incorporated by the initial owner or consignee into a drug, biological product, device, food, food additive, color additive, or dietary supplement that will be exported by such owner or consignee from the United States in compliance with section 801(e) or 802 of the act or section 351(h) of the PHS Act.

Accordingly, proposed § 1.84(b)(1) would require an importer to submit a statement to FDA each time the importer imports an article under the import-for-export provisions of the act. The statement would be required each time the product enters the United States, even if the imported article has been previously imported. The statement, under proposed § 1.84(b)(2), would include, but not be limited to, the following:

1. A formal declaration of the purpose for which the article is being imported prior to export (how it will be further processed, or the name or description of the product into which it will be incorporated in the United States), and that it will not be sold or offered for sale in the United States;

2. The name or description of the article (including any scientific or technical name);

3. Any product coding, batch, lot, or other identifying numbers;

4. The name and address of the foreign manufacturer of the imported article; and

5. The name and address of the initial owner or consignee in the United States responsible for the further processing or incorporation of the article into another product.

For blood products, proposed § 1.84(b)(2) would also require the importer to include a copy of the determination from FDA granting permission to import the product.

The statements would be sent to the FDA district having jurisdiction over the port of entry at which the article will be offered for import. Proposed § 1.84(b)(3) would require the importer to retain a copy of the statement as part of its records for the imported article.

C. Shipping Package Label Requirements

To facilitate identification of articles imported into the United States under the import–for–export provisions in section 801(d)(3) and (d)(4) of the act, FDA is proposing certain label requirements for shipping containers. Under proposed § 1.84(c), the importer, initial owner, or consignee would be responsible for permanently affixing to the shipping container, package or crate a label, in English, indicating that the shipping container, package, or crate contains article(s) that are intended for export from the United States after further processing or incorporation into another product, and may not be sold or offered for sale in the United States. The label would also name or describe the imported article(s); provide any product coding, batch, lot, or other identifying numbers; provide the foreign manufacturer's name and address; identify the imported article's country of origin (if different from that of manufacturer); and contain any appropriate warning or special handling label. For example, if an imported blood product tested positive for an infectious agent, proposed § 1.84(c)(6) would require the shipping package label to indicate the agent for which the product tested positive and prominently display the term ''BIOHAZARD.''

D. Label Requirements for Imported Blood Products

Proposed § 1.84(d) would require a foreign supplier of blood, blood components, source plasma, source leukocytes, or a component, accessory, or part thereof (including blood or plasma derivatives or intermediates) that is not licensed under section 351(a) of the PHS Act and is to be imported under section 801(d)(4) of the act, to label the products, in English, with the following information:

1. A properly descriptive name;

2. Name(s) and address(es) of establishments collecting, preparing, labeling, or pooling the source material;

3. Donor, lot, or pool numbers relating the unit to the donor;

4. The recommended storage temperature (in degrees Celsius);

5. The quantity of the product;

6. The statement, ''Import for Export;''

7. The statement, ''Not for Use in Products Subject to Licensure Under Section 351 of the Public Health Service Act;''

8. The statement, ''For Manufacturing Use Only'' or ''For Manufacturing into Noninjectable Products Only;''

9. A statement indicating that the product has been tested for infectious disease agents, including, but not limited to, HIV–1, HIV–2, hepatitis B virus, hepatitis C virus, HTLV–I, HTLV–II, and *Treponema pallidum*. The infectious agent tests may be performed using test kits other than those licensed or approved by FDA and should be the same tests described in the request for determination under proposed § 1.84(a).

10. If the product tested positive for any infectious agent listed in proposed § 1.84(d)(9), the product's label would indicate the agent(s) for which the product tested positive and display the term ''BIOHAZARD'' prominently and in bold letters; and

11. Any other appropriate warnings or special handling instructions as determined by the importer.

A copy of the label, under proposed § 1.84(a), would be included in the initial request for determination that the blood product meets the ''appropriate circumstances and conditions'' for importation under section 801(d)(4) of the act.

The requirements in proposed § 1.84(d) would be in addition to the shipping package label requirements in proposed § 1.84(c).

FDA also notes that regulations issued by other Federal agencies and departments may apply to the imported products (see, e.g., 9 CFR parts 92 et al.; 19 CFR part 12; 42 CFR part 72; 49 CFR part 173, U.S. Postal Service regulations, 39 CFR parts 124 and 125).

E. Recordkeeping Requirements

Section 801(d)(3)(B) of the act requires that ''the initial owner or consignee responsible for such imported article maintain records that identify the use of such imported article.'' Proposed § 1.84(e) would require the initial owner or consignee responsible for the article imported into the United States under the import-for-export provision to have

a place of business in the United States, to maintain identifying records for 5 years after the date on which the imported article was exported (after further processing or incorporation into another product) or destroyed, and to make the identifying records available for inspection by the agency. The identifying records would include the following information:

1. The name or description of the article (including any scientific or technical name);
2. Any product coding, batch, lot, or other identifying numbers;
3. The name and address of the foreign manufacturer of the imported article;
4. How the article will be or was further processed, and the name or description of any product into which it will be or was incorporated in the United States;
5. The signature of the responsible individual at the importing firm;
6. The name and address of the firm in the United States where the article will be further processed or incorporated into another product;
7. The disposition of the imported article, including quantity and methods of disposition (i.e., manufacturing records showing how specific articles were used or destroyed and the dates of receipt, use, destruction, or re-exportation, as that information becomes available);
8. Any product coding, lot, batch, or other identification number for the further-processed article or product incorporating the imported article;
9. A copy of the label to be applied to the shipping package, container, or crate used to export the further-processed article or product incorporating the imported article (indicating that it contains articles that may not to be sold or offered for sale in the United States and are intended for export only);
10. The name and address of the foreign purchaser of the further-processed article or product incorporating the imported article; and
11. For blood, blood components, source plasma, source leukocytes, or a component, accessory, or part thereof (including blood or plasma derivatives or intermediates) that is not licensed under section 351(a) of the PHS Act and is to be imported under section 801(d)(4) of the act, documentation of the agreement between the foreign material supplier and the U.S. manufacturer. Proposed § 1.84(e)(2)(xi) would require this documentation to outline the specific contractual relationship, the foreign manufacturing specifications, and the U.S. manufacturer's plan for auditing the foreign supplier to ensure compliance with the terms of the contract.

Additionally, proposed § 1.84(e)(2)(xi) would require the initial owner or consignee of imported blood, blood components, source plasma, source leukocytes, or a component, accessory, or part thereof (including blood or plasma derivatives or intermediates) to have written standard operating procedures to ensure that such products or articles incorporating such products are not diverted to domestic use in the United States and are kept segregated from and are not comingled with products or components intended for use in the United States. These procedures could, for example, include quarantine procedures for segregating imported blood, blood components, or final products from products intended for use in the United States and validation data for procedures used to clean equipment and manufacturing facilities that produce both products for distribution in the United States and products for export only.

FDA emphasizes that companies must also comply with the applicable requirements of section 801(e) or 802 of the act or section 351(h) of the PHS Act. (Persons who seek to import tissues or their parts or components must also comply with section 361 of the PHS Act.) Those statutory provisions may impose additional requirements on the exported product as well as requirements on notification to FDA, labeling, and records.

F. Registration and Listing Requirements for Persons Who Import and Further Process or Incorporate Blood Products That Are Not Licensed Under With Section 351(a) of the PHS Act

As an additional condition for importing blood products that are not licensed under section 351(a) of the PHS Act, proposed § 1.84(f) would require that the person in the United States who will be further processing or incorporating the imported article register with the FDA and list the blood product(s) that it will be processing or incorporating into other products or update its registration and listing. The listing would include a description of the imported article as well as the final product for export. The proposal would require that the registration and listing information be sent to the appropriate registration office listed in 21 CFR part 207 or part 607. This registration and listing will enable FDA to track all blood products imported under section 801(d)(4) of the act that are not licensed under section 351(a) of the PHS Act and to monitor the products so that they do not enter domestic commerce. Additionally, for blood products to be exported after further manufacture into final dosage form under section 351(h) of the PHS Act, such registration and listing will enable FDA to evaluate, if appropriate, the person who will be further processing or incorporating the imported article to ensure that compliance with current good manufacturing practices, or, consistent with section 802(f)(1) of the act, conformance with international manufacturing standards as certified by an international standards organization recognized by FDA, as specified by section 351(h)(3) of the PHS Act. Section 802(f)(1) of the act requires all products exported under section 802 of the act to be in substantial conformity with current good manufacturing practices or to meet international standards as certified by an international standards organization recognized by FDA. At this time, FDA has not formally recognized any international standards or international standards organizations for purposes of section 802(f)(1) of the act.

III. Environmental Impact

The agency has determined under 21 CFR 25.30(h) and (j) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity).

According to Executive Order 12866, a regulatory action is economically significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs. A regulation is considered significant under Executive Order 12866 if it raises novel legal or policy issues.

The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In

addition the proposed rule is not a significant regulatory action as defined by the Executive Order. The agency also believes that the recordkeeping and reporting requirements encompassed in the proposed rule will not have a significant effect on the economy. FDA estimates the industry's total recordkeeping and reporting costs to be $40,000 and $61,500, respectively. These estimates are based on an estimated cost of $100 per record and an average wage or $30 per hour for each report (with a total of 2,050 reports). Thus, the proposed rule's cost to industry would be $101,500.

The Regulatory Flexibility Act requires the agency to analyze options that would minimize any significant impact of a rule on small businesses. This proposed rule would entail only minimal reporting and recordkeeping as necessary to identify substances and their use that have been imported under the ''import for export'' provisions of the act. The required reporting and recordkeeping is necessary to enable the importer to ensure, and the agency to monitor, that such imported substances are further processed or incorporated into another product while in the United States, and are then exported or destroyed, as required by the act. Indeed, the ''import-for-export'' provisions of the act that these proposed regulations would implement might create new economic opportunities for U.S. businesses, including small businesses. Thus, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small businesses. Therefore, under the Regulatory Flexibility Act, the agency is not required to conduct further analysis.

V. Paperwork Reduction Act of 1995

This proposed rule contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title, description, and respondent description for the information collection requirements are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Import for Export; FDA Export Reform and Enhancement Act of 1996; Reporting and Recordkeeping Requirements for Unapproved or Violative Products Imported for Further Processing or Incorporation and Subsequent Export.

Description: The proposed rule would require an importer to report to FDA each time that it is importing an article that is to be exported after further processing or incorporation into another product in the United States, and to keep records enabling him to ensure, and FDA to monitor, that the article is so processed or incorporated and then exported, and that any portion of the import that is not exported is destroyed. This proposed rule is to implement section 801(d)(3) and (d)(4) of the act as amended by the FDA Export Reform and Enhancement Act of 1996.

Description of Respondents: Persons and businesses, including small businesses.

The estimated burden associated with the information collection requirements for this proposed rule is 10,050 hours.

FDA estimates the burden of this collection of information as follows:

TABLE 1.— ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
1.84(e)	75	5	375	20	7,500
1.84(e)(xi)	25	1	25	20	500
					8,000

[1]There are no operating and maintenance costs or capital costs associated with this collection of information.

TABLE 2.— ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. Of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
1.84(a)	25	1	25	46	1,150
1.84(b)	75	5	375	1	375
1.84(c)	75	5	375	1	375
1.84(d)	25	1	25	5	125
1.84(f)	25	1	25	1	25
					2,050

[1]There are no operating and maintenance costs or capital costs associated with this collection of information.

The above estimates were based on normal operating burdens for the preparation and submission of information to FDA for imported products, the actual number of firms and import for export entries in fiscal year (FY) 1997, and projections of the future number of firms and import for export entries. In FY 1997, 41 firms, on 175 different occasions, brought products into the United States under the import for export authority at an average rate of 4.27 entries per firm (although most firms only used the import for export authority once in FY

1997). The agency anticipates more firms (particularly firms involved with blood and blood products) to use the import for export authority in the future and, therefore, estimates the maximum number of respondents or recordkeepers to be 75 (an increase of 29 over FY 1997).

FDA's estimates for the hours per record or report are based on estimates from persons familiar with export operations. The records or reports would, in many situations, be derived from normal business records for imported products, so the burden should be very minimal and should also be consistent with current recordkeeping practices.

The agency has submitted the information collection requirements of this proposed rule to OMB for review. Interested persons are requested to send comments regarding information collection by December 24, 1998, to OMB (address above).

VI. Request for Comments

Interested persons may on or before February 8, 1999, submit to the Dockets Management Branch (address above) written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments will be on file with the Dockets Management Branch (address above) and may be seen in that office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 1

Cosmetics, Drugs, Exports, Food labeling, Imports, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 1 be amended as follows:

PART 1—GENERAL ENFORCEMENT REGULATIONS

1. The authority citation for 21 CFR part 1 is revised to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 343, 352, 355, 360b, 362, 371, 374, 381, 382, 393; 42 U.S.C. 216, 262, 264.

2. Section 1.84 is added to subpart E to read as follows:

§ 1.84 Import for export: Request for determination and reporting and recordkeeping requirements for unapproved or violative products imported for further processing or incorporation into specified products and subsequent export.

(a) *Request for determination regarding the importation of blood, blood components, source plasma, source leukocytes, or their components, accessories, or parts.* (1) A person who intends to import blood, blood components, source plasma, source leukocytes, or their components, accessories, or parts (including blood or plasma derivatives or intermediates) that are not licensed under section 351(a) of the Public Health Service Act (the PHS Act) shall, before importing the product into the United States under section 801(d)(4) of the Federal Food, Drug, and Cosmetic act (the act), request a determination that such importation is permitted.

(2) The request shall contain the following information:

(i) The names and addresses of the foreign manufacturer of the article to be imported and the initial owner or consignee in the United States that would be responsible for the further processing or incorporation of the article into another product;

(ii) The specific identity of the article to be imported and details as to how the imported article will be further processed or incorporated into a product for export;

(iii) A description of the standard operating procedures and safeguards that the initial owner or consignee in the United States will use or implement to ensure that the imported articles or products incorporating such articles are segregated from and not comingled with products, components, accessories, or parts intended for use in the United States (e.g., quarantine procedures used for segregating imported blood, blood components, or final products from products intended for use in the United States, including validation data for procedures to clean equipment and facilities used in manufacturing products for use in the United States and products for export);

(iv) General donor screening questionnaire or criteria, translated into English, that will be used to screen donors;

(v) A certification that tests for infectious disease will be performed by the foreign supplier on the blood, blood components, source plasma, or source leukocytes, or their components, accessories, or parts (including blood or plasma derivatives or intermediates) at the time of donation and before importation to the United States, and the expected results of such tests. The infectious disease agents that shall be tested for include, but are not limited to: HIV–1, HIV–2, hepatitis B virus, hepatitis C virus, HTLV–I, HTLV–II, and *Treponema palladum*. A request under paragraph (a) of this section may be based upon infectious agent tests performed using test kits other than those licensed or approved by the Food and Drug Administration (FDA). In such cases, a copy of the labeling for the test kit used, translated into English, shall be included in the submission; and

(vi) A copy of the label described in paragraph (d) of this section.

(3) The request for determination shall be submitted to Office of Compliance, Division of Case Management (HFM–610), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448.

(4) Records pertaining to the request for determination shall be maintained and made available for FDA review upon request.

(5) If FDA determines that the blood, blood component, source plasma, or source leukocyte, or component, accessory, or part meets the appropriate circumstances and conditions to permit its importation into the United States, FDA shall, in writing, notify the person requesting the determination that it has granted permission to import the article.

(b) *Reporting requirements.* (1) A person wishing to import articles specified in paragraphs (b)(l)(i) through (b)(l)(iv) of this section that may not be sold or offered for sale in the United States, but which the initial owner or consignee intends to have further processed or incorporated into a drug, biological product, device, food, food additive, color additive, or dietary supplement in the United States, and which the initial owner or consignee will export from the United States in accordance with sections 801(e) or 802 of the act or section 351(h) of the PHS Act, shall submit to the FDA district with jurisdiction over the port of entry, with each import entry, a statement containing information described in paragraph (b)(2) of this section. The articles for which this reporting requirement apply are:

(i) A component of a drug (including a drug, veterinary drug, and biological for use in humans);

(ii) A component part or accessory of a device, or other article of device requiring further processing, which is ready or suitable for use for health-related purposes;

(iii) A food or color additive; and

(iv) A dietary supplement.

(2) The statement that shall be supplied to FDA with each import entry shall include, but is not limited to, the following information:

(i) A formal declaration of the purpose for which the article is being imported before export (how it will be further processed, or the name or description of the product into which it will be incorporated in the United States) and that it will not be sold or offered for sale in the United States;

(ii) The name or description of the article (including any scientific or technical name);

(iii) Any product coding, batch, lot, or other identifying numbers;

(iv) The name and address of the foreign manufacturer of the imported article (if different from the name of the foreign shipper identified in the import records at the U.S. Customs Service);

(v) The name and address of the initial owner or consignee in the United States and, if different, the address in the United States where the article will be further processed or incorporated into any product listed in paragraph (b)(1) of this section; and

(vi) In addition to the information described in paragraphs (b)(l)(i) through (b)(l)(iv) of this section, for blood, blood components, source plasma, source leukocytes, or a component, accessory, or part thereof (including blood or plasma derivatives or intermediates) that are not licensed under section 351(a) of the PHS Act and are to be imported under section 801(d)(4) of the act, the statement shall include a copy of the determination by the agency granting permission to import the product.

(3) The initial owner or consignee also shall keep a copy of the statement as part of its records for the article.

(c) *Shipping-package label requirements.* The importer, initial owner, or consignee of articles to be imported into the United States for further processing or incorporation into a product for export shall permanently affix, to the articles' shipping container, package or crate, a label that provides the following information in English:

(1) Contains article(s) that are intended for export from the United States after further processing or incorporation into articles intended for export, and may not be sold or offered for sale in the United States;

(2) The name or description of the article(s) (including any scientific or technical name);

(3) The product coding, batch, lot, or other identifying numbers;

(4) The name and address of the responsible foreign manufacturer of the imported article(s);

(5) The country of origin (if different from that of responsible manufacturer); and

(6) Any appropriate warning or special-handling label, such as ''BIOHAZARD'' for products potentially contaminated with an infectious agent.

(d) *Label requirements for blood products.* The foreign supplier of blood, blood component, source plasma, source leukocyte, or a component, accessory, or part thereof (including blood or plasma derivatives or intermediates) that is not licensed under section 351(a) of the PHS Act and is to be imported under section 801(d)(4) of the act, shall label the product in English with the following information:

(1) A properly descriptive name;

(2) Name(s) and address(es) of establishments collecting, preparing, labeling, or pooling the source material;

(3) Donor, lot, or pool numbers relating the unit to the donor;

(4) The recommended storage temperature (in degrees Celsius);

(5) The quantity of the product;

(6) The statement, ''Import for Export;''

(7) The statement, ''Not for Use in Products Subject to Licensure Under Section 351 of the Public Health Service Act;''

(8) The statement, ''For Manufacturing Use Only'' or ''For Manufacturing into Noninjectable Products Only;''

(9) A statement indicating that the product has been tested for infectious disease agents, including, but not limited to: HIV–1, HIV–2, hepatitis B virus, hepatitis C virus, HTLV–I, HTLV–II, and *Treponema palladum*. A request under paragraph (a) of this section may be based upon infectious agent tests performed using test kits other than those licensed or approved by FDA. In such cases, a copy of the label for the test kit used, translated into English, shall accompany the request;

(10) If the product has tested positive for any infectious agent as required in paragraph (d)(9) of this section, the product's label shall indicate the agent(s) for which the product has tested positive, and the term ''BIOHAZARD'' shall be prominently displayed in bold letters; and

(11) Any other appropriate warnings or special handling instructions as determined by the importer.

(e) *Recordkeeping requirements.* (1) The initial owner or consignee who is responsible for the article offered for import shall have a place of business in the United States.

(2) The initial owner or consignee responsible for the article offered for import shall maintain identifying records for 5 years after exportation or destruction of the imported article, and shall make those identifying records available for inspection by the agency. The identifying records shall include the following information:

(i) The name or description of the article (including any scientific or technical name);

(ii) Any product coding, batch, lot, or other identifying numbers;

(iii) The name and address of the foreign manufacturer of the imported article;

(iv) How the article will be or was further processed, and the name or description of any product into which it will be or was incorporated in the United States;

(v) The signature of the responsible individual at the importing firm;

(vi) The name and address of the firm in the United States where the article will be or was further processed or incorporated into another product;

(vii) The disposition of the imported article (i.e., manufacturing records showing how specific articles were used or destroyed and the dates of receipt, use, destruction, or re-exportation, as that information becomes available);

(viii) Any product coding, lot, batch, or other identification number for the further-processed article or product incorporating the imported article;

(ix) A copy of the label to be applied to the shipping package, container, or crate used to export the further–processed article or product incorporating the imported article (indicating that it contains articles that may not be sold or offered for sale in the United States and are intended for export only);

(x) The name and address of the foreign purchaser of the further-processed article or product incorporating the imported article; and

(xi) Additionally, for blood, blood components, source plasma, source leukocytes, or a component, accessory, or part thereof (including blood or plasma derivatives or intermediates) that is not licensed under section 351(a) of the PHS Act and is to be imported under section 801(d)(4) of the act, the records shall include documentation of the agreement between the foreign material supplier and the U.S. manufacturer. The documentation shall outline the specific contractual relationship, the foreign manufacturing specifications, and the U.S. manufacturer's plan for auditing the foreign supplier to ensure compliance with the terms of the contract. The initial owner or consignee shall have written standard operating procedures to ensure that such products are not

diverted to domestic use in the United States and are kept segregated from and not comingled with products or components intended for use in the United States (e.g., quarantine procedures used for segregating imported blood, blood components, or final products from products intended for use in the United States, including validation data for procedures to clean equipment and facilities used for manufacturing products for use in the United States and exported products).

(f) *Registration and listing requirements.* Each person who intends to further process or incorporate blood, blood components, source plasma, source leukocytes, or a component, accessory, or part thereof (including blood or plasma derivatives or intermediates) that is not licensed under section 351(a) of the PHS Act and is to be imported under section 801(d)(4) of the act, shall register with FDA and list the blood product to be further processed or incorporated into other products, or update its registration and listing, and include in the listing a description of the imported material as well as the final product for export. The information shall be sent to the appropriate registration office listed in parts 207 or 607 of this chapter.

Dated: November 14, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

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BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Chapter I

[USCG–1998–4501]

RIN 2115–AF68

Improvements to Marine Safety in Puget Sound-Area Waters

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Coast Guard seeks public comment on potential rules that would improve marine safety in Puget Sound-Area waters including Puget Sound, the Strait of Juan de Fuca, passages around and through the San Juan Islands, and the Olympic Coast National Marine Sanctuary. Based on a recent determination by the Secretary of Transportation regarding the status of marine safety in the Puget Sound-area, the Coast Guard will soon begin a comprehensive cost-benefit analysis to study the feasibility of implementing new safety measures, including extended tug escort requirements for certain vessels and a dedicated pre-positioned rescue vessel. Public input will help focus the cost-benefit analysis and help us develop any future proposed rules that may be necessary.

DATES: Comments must reach the Docket Management Facility on or before May 24, 1999. Please submit comments relating to the cost-benefit analysis as soon as possible, preferably by December 24, 1998.

ADDRESSES: You may mail comments to the Docket Management Facility [USCG–1998–4501], U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza level of the Nassif Building at the same address, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza level of the Nassif Building at the same address, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

A copy of the International Private Sector Tug-of-Opportunity System (ITOS) Report to Congress is available in the public docket at the above addresses or on the Internet at http://www.uscg.mil/hq/g-m/nmc/genpub.htm. You may also obtain a copy by calling the project manager at the Coast Guard number in **FOR FURTHER INFORMATION CONTACT**.

A copy of the Puget Sound Additional Hazards Study, formally titled ''Scoping Risk Assessment: Protection Against Oil Spills in the Marine Waters of Northwest Washington State,'' is available in the public docket at the above addresses and from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, telephone 800–553–6847, fax 703–321–8547. The report may be ordered as document PB97–205488 and the technical appendices to the report as document PB97–205470.

FOR FURTHER INFORMATION CONTACT: For information concerning this document, call Commander T.M. Close, Human Element and Ship Design Division, U.S. Coast Guard, telephone 202–267–2997. For questions on viewing, or submitting material to, the docket, call Dorothy Walker, Chief, Documents, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages you to participate in this potential rulemaking by submitting written data, views, or arguments. If you submit comments, you should include your name and address, identify this document [USCG–1998–4501] and the specific section or question in this document to which your comments apply, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you want acknowledgment of receipt of your comments, you should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period.

No public meeting is planned. You may request a public meeting by submitting a comment requesting one to the address under **ADDRESSES**. The request should include the reasons why a meeting would be beneficial and recommended locations for the meeting. If it is determined that a meeting should be held, we will announce the time and place in a later notice in the **Federal Register**.

Background and Purpose

During the last two and a half years, the Coast Guard and the Office of the Secretary of Transportation (OST), in cooperation with the State of Washington, the maritime industry, and other local stakeholders, have assessed marine safety in Puget Sound-area waters. The goal of all involved parties is to ensure a high degree of safety and environmental protection for the area's waterways.

On April 26, 1996, the White House issued the ''Department of Transportation Action Plan to Address Vessel and Environmental Safety on Puget Sound-Area Waters.'' This Action Plan consists of three elements. The first element is to establish criteria for and facilitate the development of a private-sector system to provide timely emergency response to vessels in distress in the Strait of Juan de Fuca and near the Olympic Coast National Marine Sanctuary. The second element is to determine the adequacy of all vessel safety and environmental protection

measures in Puget Sound-area waters. The third and final element is to determine whether any hazard scenarios warrant consideration of additional casualty prevention or response measures.

International Tug of Opportunity System

Section 401 of the Alaska Power Administration Asset Sale and Termination Act (November, 1995) directed the Coast Guard to submit a plan to Congress outlining the most cost-effective means of implementing an international, private-sector, tug-of-opportunity system (ITOS). The Coast Guard, after working in cooperation with a cross section of the maritime industry, submitted reports to Congress in January and December of 1997.

A voluntary ITOS is now in effect in the Puget Sound area, with over 80 tugs participating in the system. The ITOS provides a means to identify tugs that may be in the vicinity of a vessel in distress. Participating tugs are equipped with Automatic Identification System (AIS) transponders that automatically report their positions to the Marine Exchange of Puget Sound.

Puget Sound Additional Hazards Study

In 1997, the Department of Transportation conducted a broad assessment of the probabilities and consequences of marine accidents in Puget Sound-area waters, including Puget Sound, the Strait of Juan de Fuca, passages around and through the San Juan Islands, and the offshore waters of the Olympic Coast National Marine Sanctuary. This assessment, formally titled ''Scoping Risk Assessment: Protection Against Oil Spills in the Marine Waters of Northwest Washington State'' but commonly called the ''Puget Sound Additional Hazards Study,'' was conducted by the Volpe National Transportation Systems Center with significant stakeholder participation. A key element of this Study was a panel of recognized safety and environmental protection experts who provided information, opinions, and recommendations regarding the current safety system. The Study was completed in July 1997. Since that time, the Coast Guard and the Office of the Secretary of Transportation have continued outreach efforts and solicited input from State officials and the public on how to proceed based on the recommendations of the Additional Hazards Study.

Secretary's Determination

The Secretary of Transportation has determined that while the many existing elements of the region's marine transportation system comprise a system that is safe, there is always room for improvement. The Secretary's Determination and the Department's Announcement regarding additional risk mitigation measures appear in the ''Notices'' section of this issue of the **Federal Register**. The Secretary found that consideration of additional safety measures is warranted to address the risks of collisions, powered groundings, and drift groundings.

Announcement on Additional Measures

Accompanying the Secretary's Determination, the Department released an announcement regarding additional risk mitigation measures. Some additional measures can be implemented immediately, while others require more thorough evaluation before any future implementation.

A promising measure to reduce the risk of collisions and powered groundings is improved waterway management, such as modifications to the Traffic Separation Schemes (TSS) at the western approach to the Strait of Juan de Fuca. The Thirteenth Coast Guard District is starting a Port Access Study in consultation with the Canadian Government, as well as State and local stakeholders. This study will provide recommendations for TSS modifications.

The Department also announced ongoing enhancements to the Coast Guard's existing Port State Control Program to increase attention to English language proficiency and increase information-sharing with Canadian authorities. The Port State Control Program keeps substandard foreign-flag vessels out of U.S. waters. Further, the Department announced several other human element measures that help reduce risk by improving crew effectiveness and performance. These measures address fatigue prevention and improved communications. The Captain of the Port of Puget Sound is implementing these measures with Canadian and Washington State counterparts through the enforcement of recent International treaties and through ongoing Coast Guard programs.

The Announcement also described efforts to fully evaluate potential additional measures to prevent a drift grounding in the event of a loss of steering or propulsion. While ITOS provides risk reduction for drift groundings, there are concerns that a sufficient number of tugs may not be present in the western Strait of Juan de Fuca and in offshore areas in the course of routine commercial service.

To address this concern, the Department announced an effort to study the effectiveness of ITOS. In addition, the Coast Guard and the State of Washington will fund and manage an analysis of the costs and additional risk reduction benefits that would be afforded by extended tug escorts for commercial vessels or by a pre-positioned rescue vessel. These analyses will begin immediately and should be completed by the end of next summer.

Regulatory History

Section 4116(c) of the Oil Pollution Act of 1990 (OPA 90) requires two tug escorts for single-hull tankers over 5,000 gross tons transporting oil in Prince William Sound, Alaska, and Rosario Strait and Puget Sound, Washington (including those portions of the Strait of Juan de Fuca east of Port Angeles, Haro Strait, and the Strait of Georgia subject to United States jurisdiction). The single-hull tankers to which that requirement applies will be incrementally phased out. By 2015, all single-hull tankers entering U.S. waters will be replaced by double hull tankers. The Coast Guard published a final rule (CGD 91–202) on August 19, 1994, implementing the OPA 90 escort requirements. Those regulations are codified in 33 CFR part 168. Costs and benefits were not a central issue for that rulemaking because the escort requirements were specifically required by statute. In addition, industry was incurring significant escort-related costs under existing state escort regulations in both Alaska and Washington. Since 1975, the State of Washington has required escorts for certain loaded single and double hull tankers transiting east of Port Angeles.

OPA 90 also gives the Secretary authority to extend the two-tug escort requirement to other U.S. waters, as appropriate. In an Advance Notice of Proposed Rulemaking (ANPRM) published on April 27, 1993 (CGD 91–202a), the Coast Guard sought public comment on: (1) What U.S. waters, other than in the Puget Sound area east of Port Angeles, should have an escort vessel requirement, (2) what vessels should be required to comply with an escort rule, and (3) what the escort vessels should be expected to do. In the ANPRM, the Coast Guard suggested that the Ports and Waterways Safety Act (PWSA) might provide authority for more flexible escort requirements than OPA 90, such as the use of single, high-performance escort vessels (instead of the two-tug escort required under OPA 90). Several public meetings were held on the ANPRM. In the Notice of Public Meeting and Request for Comments

published on December 21, 1994, the Coast Guard expanded its discussion of its PWSA authority.

Hundreds of comments were received in response to both the 1993 ANPRM and the 1994 Request for Comments and during the several public meetings. Several comments supported extending tug-escort requirements for Puget Sound-area waters beyond the OPA 90-mandated area; these comments are included in this new docket. In general, there was no consensus among the comments. Most were subjective and without supporting data. For example, arguments against escorts frequently cited substantial adverse economic impact but did not include cost analyses. Similarly, recommendations for escorts frequently cited environmental sensitivity to oil spills but did not include analyses of the navigational hazards to vessels. Therefore, it was difficult to proceed with a rulemaking without the needed cost-benefit information.

Extending escort requirements beyond the OPA 90 mandated areas is discretionary and subject to much greater economic scrutiny, particularly in light of Congressional and Administration concerns for the cost-effectiveness of Federal regulations (Executive Order 12866, for example). Further complicating the issue was the broad geographic application of the previous ANPRM which could include any waters of the U.S. For these reasons, the Coast Guard elected to defer work on that rulemaking project (CGD 91–202a) until ITOS and the Additional Hazards Study are addressed and more cost-benefit information is gathered.

Under authority of the PWSA (33 U.S.C. 1223–1224), the Coast Guard has initiated this new potential rulemaking to address additional safety measures, including extended tug escorts and a dedicated pre-positioned rescue vessel, focusing specifically on Puget Sound-area waters.

Discussion of Measures for Further Evaluation

Extended Tug Escorts

In the upcoming cost-benefit analysis announced by the Department, the Coast Guard and the State of Washington will evaluate the potential of extending the current tug-escort requirement (applicable to single-hull tankers over 5,000 gross tons) west of the line connecting New Dungeness Light with Discovery Island light to include a wider range of commercial vessels transiting the entire Strait of Juan de Fuca.

The Additional Hazards Study raised several issues regarding extended tug escorts. Increasing the vessel escort area would benefit escorted vessels in the event of propulsion or steering loss by preventing some powered and drift groundings. An escort might also reduce the risk of collisions for the escorted vessel. In addition, extending tug-escort requirements could potentially increase the number of vessels available for ITOS, which is a concern for the area west of Port Angeles.

Extending tug escort requirements only for single-hull tankers could lead to the collapse of ITOS, as the voluntary tank-vessel participants would no longer have a reason to pay for a redundant safety system. Should ITOS collapse, the risk for non-tank vessels would potentially increase due to the loss of this safety system. Similarly, the risk of drift groundings for all vessels off the coast would increase. The potential increase in risk for non-tank vessels could be addressed by requiring escorts for all single-hull vessels carrying a significant amount of petroleum as cargo or as bunkers (ship fuel). Extending the escort requirements for single-hull tankers or requiring escorts for all single-hull vessels carrying a significant amount of petroleum would impose significant costs on those industries.

By extending the tug escort area, the time it would take for an escorted vessel to transit the Strait of Juan de Fuca would be lengthened (due to slower speeds while under escort), thus increasing its vulnerability. Further, the Additional Hazards Study classified the location near Port Angeles where tank vessels rendezvous with escort vessels as a significant risk. Shifting the rendezvous location to the entrance of the Strait of Juan de Fuca, closer to the Sanctuary and in less hospitable conditions, could increase the likelihood and consequences of spills.

Dedicated Pre-Positioned Rescue Vessel

The other measure to be addressed in the cost-benefit analysis is the concept of stationing a pre-positioned rescue vessel at the approaches to the Strait of Juan de Fuca. Such a vessel could help prevent drift groundings and could be outfitted to provide some initial salvage, spill response, and fire-fighting capabilities.

While a pre-positioned rescue vessel may be a valuable safety addition to Puget Sound-area waters, such a vessel would not significantly reduce the likelihood of collisions, powered groundings, or allisions. Its ability to reduce risk would be limited, because ITOS already addresses many of the same risks. Additionally, a requirement for such a vessel might require additional legislation. Finally, there are concerns regarding who would pay for such a vessel.

International Considerations

We must consider the international nature of the Puget Sound-area waterway when addressing potential new safety measures, such as extended tug escorts and a dedicated rescue vessel. While the Coast Guard has the authority to regulate all vessels within U.S. waters of the Strait, our enforcement authority does not extend to vessels in the outbound channel, which is predominately in Canadian waters. Any future extended tug escort requirement could not apply to Canadian waters without bilateral enactment.

Cost-benefit Analysis and Related Questions

As announced by the Department, the Coast Guard and the State of Washington will evaluate the degree of effectiveness of ITOS and jointly manage and fund a cost-benefit analysis of extended tug escorts and a dedicated rescue vessel. These analyses will assist the Coast Guard in developing a regulatory assessment for a future regulatory proposal, if deemed necessary. To help focus these analyses, the Coast Guard requests comments on the following questions, although comments on other issues addressed in this document are also welcome. In responding to a question, please explain your reasons for each answer, and follow the instructions under **REQUEST FOR COMMENTS** above.

1. Given the results of the Additional Hazards Study and existing safety measures currently in place, including existing Federal and state tug escort requirements for certain tank ships east of the New Dungeness-Discovery Island line; Vessel Traffic Services; Traffic Separation Schemes; the Coast Guard's Port State Control Program; and Coast Guard inspection of U.S. tank ships, cargo ships and passenger vessels, what improvements to marine safety in Puget Sound area-waters are most cost-effective?

2. Should tug escorts be required for all in-bound laden single-hull tank ships west of the line connecting New Dungeness Light with Discovery Island Light? If so, how far west should the escort begin? What costs would be associated with such an escort requirement? Should a bilateral agreement with Canada be pursued to require escorts for laden outbound

tankers? What costs would be associated with such a requirement?

3. Should tug escorts be required for all single-hull ships over a certain size? If so, what size would be appropriate? What costs would be associated with such an escort requirement? Are there criteria other than vessel size that should be considered (cargo carried, fuel capacity, vessel's flag, vessel's history of regulatory compliance, etc.)?

4. Is a single tug adequate as an escort? Why or why not? If so, what characteristics should a single escort tug have?

5. Should escorts be required throughout the year or only during certain seasons? How would a seasonal requirement affect costs?

6. Are there additional hazards created by establishing escort requirements? If so, what are they and what are the risks?

7. Should there be a dedicated rescue vessel pre-positioned in the Strait of Juan de Fuca? If so, where should it be located? Who should operate it? What costs are associated with such a vessel? Can it be in a Canadian port? Should such a vessel be in addition to or in place of extended escort requirements?

8. What characteristics should a dedicated rescue vessel have? Should it be a tug, a salvage vessel, an oil spill response vessel, or some other type of vessel? How would costs vary according to the type of vessel used?

9. Should a dedicated rescue vessel be pre-positioned throughout the year or only during certain seasons? How would a seasonal requirement affect costs?

10. Should the dedicated rescue vessel serve as an oil spill response vessel or a platform for oil spill mitigation equipment? If so, what type of and how much equipment should be on board? How much would this equipment cost?

11. Who should fund any vessel pre-positioned in the Strait of Juan de Fuca? How should the funds be collected?

12. Are there additional hazards created by establishing a dedicated rescue vessel in the Strait of Juan de Fuca? If so, what are they and what are the risks?

13. If tugs were hired specifically to be available to respond to potential ship emergencies in the Strait of Juan de Fuca when no other tugs happen to be in the region, would this arrangement adequately address risks, considering existing safety programs? What ships should such a requirement apply to? Who should pay for these tugs? What costs would be associated with such a requirement?

14. Since the Oil Pollution Act of 1990, what oil spills have occurred from shipboard sources in Puget Sound-area waters including the Strait of Juan de Fuca and approaches to the Strait? What controls would have helped to prevent these spills? What controls or countermeasures would have helped mitigate these spills once they occurred?

15. What types of oil spills would be prevented by escorting laden tankers through the Strait of Juan de Fuca and its approaches?

16. What types of oil spills would be prevented by pre-positioning a dedicated rescue vessel in the Strait of Juan de Fuca?

17. How do the consequences of an oil spill in Puget Sound-area waters compare with the consequences of an oil spill in other State of Washington waters? In other waters around the U.S.?

18. Are the response time estimates developed in the ITOS Report to Congress and ITOS Addendum Report accurate? If not, why not and what is a more accurate estimate?

Preliminary Regulatory Assessment

At this time, this rulemaking is not considered significant under section 3(f) of E.O. 12866; however, it is significant under the regulatory policies and procedures of the Department of Transportation [44 FR 11030 (February 26, 1979)] due to substantial public interest. The Coast Guard will prepare an assessment of potential costs and benefits under section 6(a)(3) of E.O. 12866 for any future rulemaking deemed necessary.

The primary purpose of this advance notice is to solicit public comments to help the Coast Guard identify the costs and benefits of potential new safety measures to the extent that they exceed current statutory and regulatory requirements or current industry practices. We expect that public response to the questions and issues addressed in this document will help us prepare a regulatory assessment for any future rules that may be necessary. We seek your feedback on what costs you may incur should any of the proposed additional measures be required, as well as associated benefits.

Small Entities

Under the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*], the Coast Guard must consider whether any potential rulemaking would have significant economic impacts on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Because we have not yet proposed specific requirements and because the number of affected small entities has not been identified, we cannot accurately estimate the potential impact on small entities at this time. The Coast Guard will address small entity issues as part of the planned cost-benefit analysis discussed in this document. The Coast Guard expects that comments received on this document will help it determine the number of potentially affected small entities, and weigh the impacts of various regulatory alternatives.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–21], the Coast Guard wants to assist small entities to understand this document so they can better evaluate the potential effects of any future rulemaking on them and participate in the rulemaking process. If you believe that your small business, organization, or agency may be affected by this potential rulemaking, please explain how you could be affected, and tell us what flexibility or compliance alternatives the Coast Guard should consider to minimize the burden on you.

If you have questions concerning this document, you may call the Coast Guard point of contact designated in **FOR FURTHER INFORMATION CONTACT.** We also maintain a small business regulatory assistance Web Page at http://www.uscg.mil/hq/g-m/regs/reghome.html which has current information on small entity issues and proposed Coast Guard regulations. To help small entities become more involved in this rulemaking, the Coast Guard will mail copies of this advance notice to Small Business Development Center (SBDC) State Offices in the Northwest for distribution to local SBDC offices and interested small businesses.

Collection-of-Information

Under the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*], the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection-of-information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection-of-information requirements include reporting, record-keeping, notification, and other similar actions.

The Coast Guard cannot yet estimate the paperwork burden associated with this potential rulemaking because it has not yet proposed any new requirements. If and when a specific regulatory

proposal is developed, the Coast Guard will prepare a request for OMB approval of any collection-of-information requirements.

Federalism

The Coast Guard has analyzed this advance notice under the principles and criteria contained in E.O. 12612. From the information available at this time, the Coast Guard cannot determine whether this potential rulemaking would have sufficient federalism implications to warrant the preparation of a Federalism Assessment. If and when a specific regulatory proposal is developed, the Coast Guard will address any federalism issues.

Unfunded Mandates

Under the Unfunded Mandates Reform Act [Pub. L. 104–4], the Coast Guard must consider whether this potential rulemaking would result in an annual expenditure by State, local, and tribal governments, or by the private sector, in the aggregate of $100 million (adjusted annually for inflation). The Act also requires (in Section 205) that the Coast Guard identify and consider a reasonable number of regulatory alternatives and, from those alternatives, select the least costly, most cost-effective, or least burdensome alternative that achieves the objective.

The Coast Guard will address unfunded mandate issues as part of the cost-benefit analysis. Any information you can provide regarding unfunded mandate issues related to this proposal would be useful.

Environment

The Coast Guard has concluded that it is premature to make an assessment of environmental impact of any rules that might be adopted because no specific action is proposed at this time. The Coast Guard will conduct any required environmental assessment and appropriate documentation in accordance with Commandant Instruction M16475.1B before publication of any notice of proposed rulemaking. The Coast Guard invites comments addressing possible effects that this potential rulemaking may have on the environment or addressing possible inconsistencies with any Federal, State, or local law or administrative determinations relating to the environment.

Dated: November 20, 1998.

James M. Loy,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 98–31512 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–194, RM–9360]

Radio Broadcasting Services; Jewett and Windham, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by the Ridgefield Broadcasting Corporation seeking the reallotment of Channel 250A from Jewett to Windham, NY, as the community's first local aural service, and the modification of Station WAXK's construction permit to specify Windham as its community of license. Channel 250A can be allotted to Windham in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.6 kilometers (2.3 miles) northwest, at coordinates 42–20–12 North Latitude and 74–16–19 West Longitude, to accommodate petitioner's desired transmitter site. Canadian concurrence in the allotment at Windham is required since the community is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before January 4, 1999, and reply comments on or before January 19, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Dennis Jackson, President, Ridgefield Broadcasting Corporation, 19 Boas Lane, Wilton, CT 06897–1301 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–194, adopted November 4, 1998, and released November 13, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–31344 Filed 11–23–98; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 63, No. 226
Tuesday, November 24, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Delaware Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Delaware Advisory Committee to the Commission will convene at 11 a.m. and adjourn at 5 p.m. on December 15, 1998, at the Brandywine Suites Hotel, 707 King Street, Wilmington, DE 19801. The purpose of the meeting is to review plans and make assignments for development of a citizens' reference guide to civil rights, and to discuss new project concepts and future activity.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 17, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–31401 Filed 11–23–98; 8:45 am]

BILLING CODE 6335–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111898A]

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of meetings of the North Pacific Fishery Management Council and its advisory bodies.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will meet in Anchorage, Alaska the week of December 6, 1998.

DATES: 1. The Scientific and Statistical Committee (SSC) will meet beginning at 8:00 a.m. on Sunday, December 6, continuing through at least Wednesday, December 9, 1998.

2. The Advisory Panel (AP) will begin meeting at 8:00 a.m. on Monday, December 7, and continue through Friday, December 11, 1998.

3. The Council will meet beginning at 8:00 a.m. on Wednesday, December 9, continuing through Monday, December 14, 1998.

Other workgroup or committee meetings may be held during the week. Notices of these meetings will be posted at the hotel. All meetings are open to the public with the exception of Council executive sessions, which may be held during the noon hour during the meeting week, if necessary, to discuss personnel, international issues, or litigation.

ADDRESSES: The meetings will be held at the Anchorage Hilton Hotel, 503 W. Third Avenue, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff, telephone: 907–271–2809.

SUPPLEMENTARY INFORMATION:

The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. Reports from NMFS and Alaska Department of Fish and Game (ADF&G) on the current status of the fisheries off Alaska, enforcement reports from the United States Coast Guard and NMFS Enforcement, and report from NMFS on seabird bycatch in groundfish fisheries.

2. Receive an update on Section 7 findings for Steller sea lions and provide input or take action as necessary. Discuss necessary follow-up amendments to fishery management plans for 2000.

3. Review progress on 1999 implementation of the American Fisheries Act and provide guidance to staff for follow-up amendments.

4. Receive a status report from the Council's Socioeconomic Data Committee.

5. Approve appointments to the Council's AP and SSC for 1999.

6. Review an initial performance report for the Improved Retention/Improved Utilization Program in the groundfish fisheries and take final action on a regulatory amendment to the program.

7. Groundfish amendments issues scheduled for discussion or action are as follows:

a. Take final action on an amendment for demersal shelf rockfish retention in the Gulf of Alaska individual fishing quotas fisheries.

b. Receive report on an experimental fishery conducted by the Groundfish Forum.

8. The Council will receive the final Stock Assessment and Evaluation (SAFE) reports for the 1999 Gulf of Alaska and Bering Sea and Aleutian Islands groundfish fisheries and approve final 1999 harvest and bycatch allocations.

9. The Council will review current staff tasking and provide guidance to staff.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during the meeting. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–

271–2809, at least 7 working days prior to the meeting date.

Dated: November 18, 1998.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–31370 Filed 11–23–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110998C]

Marine Mammals; File No. 738–1454

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Permit No. 738–1454 issued to Ms. Carole Conway, Genomic Variation Laboratory, Department of Animal Science, Meyer Hall, University of California, Davis, CA 95616–3322, was amended to allow export of blue whale samples.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130 Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4001).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Sara Shapiro (301/713–2289).

SUPPLEMENTARY INFORMATION: The subject amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: November 19, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–31371 Filed 11–23–98; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits and Increase of a Guaranteed Access Level for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

November 19, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits and increasing a guaranteed access level.

EFFECTIVE DATE: November 19, 1998.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 339/639 is being increased for special shift, reducing the limit for Categories 338/638 to account for the special shift being applied.

Upon the request of the Government of the Dominican Republic, the U.S. Government has agreed to increase the current guaranteed access level for textile products in Category 444.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 67622, published on December 29, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 19, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 19, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on November 19, 1998, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
338/638	950,766 dozen.
339/639	1,195,452 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

Also effective on November 19, 1998, you are directed to increase the guaranteed access level (GAL) for Category 444 to 40,000 numbers. The GALs for Categories 338/638 and 339/639 remain unchanged.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–31404 Filed 11–23–98; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 8 December 1998.

Time of Meeting: 0900–1600.

Place: 1801 N. Beauregard St., Room 117W, Alexandria, VA 22311.

Agenda: The Army Science Board (ASB) Summer Study Panel will meet for discussions on ''Enabling Rapid and Decisive Strategic Maneuver for the Army After 2010.'' This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please contact Wayne Joyner at (703) 604–7490.

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 98–31314 Filed 11–23–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 25, 1999.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *PatSherrill@ed.gov,* or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 18, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: New.

Title: National Survey to Determine the Need for Special Education Services.

Frequency: One time.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 689; Burden Hours: 668.

Abstract: The Office of Correctional Education is conducting a study to determine the number of incarcerated juvenile and youthful offenders with disabilities. This study is being undertaken by the American Institutes for Research. Three surveys and methodology are being presented for review.

[FR Doc. 98–31321 Filed 11–23–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science; Office of Science Financial Assistance Program Notice 99–04: Human Genome Program—Technological Advances

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy, hereby announces its interest in receiving grant applications in support of the DOE Human Genome Program (HGP). This program is a coordinated, multidisciplinary, goal-oriented research effort to obtain a detailed understanding of the human genome at the molecular level. High throughput sequencing is now a major focus of the program, but needs for supporting resources and technologies remain in several areas.

DATES: Potential applicants are encouraged to submit a brief preapplication. All preapplications, referencing Program Notice 99–04, should be received by DOE by 4:30 p.m., E.S.T., December 3, 1998. A response to the preapplications discussing the potential program relevance and encouraging or discouraging a formal application generally will be communicated within several days of receipt.

Formal applications submitted in response to this notice must be received by 4:30 p.m., E.S.T., February 23, 1999, in order to be accepted for merit review and to permit timely consideration for award in FY 1999.

ADDRESSES: Preapplications, referencing Program Notice 99–04, should be sent preferable by E-mail to joanne.corcoran@oer.doe.gov, however, preapplications will also be accepted if mailed to the following address: Ms. Joanne Corcoran, Office of Biological and Environmental Research, SC–72, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, or transmitted by facsimile to (301) 903–8521.

After receiving notification from DOE concerning successful preapplications, applicants may prepare formal applications and send them to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 99–04. The above address for formal applications also must be used for transmission by U.S. Postal Service Express Mail, any commercial mail

delivery service, or when hand carried by the applicant. An original and seven copies of the application must be submitted.

FOR FURTHER INFORMATION CONTACT: Dr. Marvin Stodolsky if referencing topics (1–4) and Dr. Daniel Drell if referencing topic (5) and Ms. Joanne Corcoran for general program information. Their email addresses are marvin.stodolsky@oer.doe.gov, daniel.drell@oer.doe.gov and joanne.corcoran@oer.doe.gov with telephone exchange (301) 903 and respective extensions 4475, 4742 and 6488. E-mail communications are preferred. General HGP information can also be obtained with Internet browsers at: http://www.er.doe.gov/production/ober/hug_top.html, http://www.ornl.gov/TechResources/Human_Genome/home.html, and sites linked to these WWW pages. The solicitation topics are in accordance with the 1998 revision of the 5-year goals of the U.S. HGP. It is published in the October 21, 1998 issue of the journal, Science, volume 282 and is available on the Internet at: http://www.ornl.gov/hg5yp. The full text of Program Notice 99–04 is available via the Internet using the following web site address: http://www.er.doe.gov/production/grants/grants.html.

SUPPLEMENTARY INFORMATION: Under this solicitation near term resource development or improvements are sought in: (1) Large insert DNA clone libraries and their characterization; (2) chemistries and biochemistries for DNA sequencing; (3) protocols and reagents for full length messenger RNA to cDNA production and sequencing; (4) characterizing exceptional chromosomal regions including those near telomeres and centromers by sequencing and/or other relevant methodologies; and (5) computational processing of sequence information including viewing, curating, and integrating. Instrumentation development complementary to these topics was sought under a separate solicitation and is specifically excluded from this call.

Topic Details

The goal of (1), large insert DNA clone libraries and their characterization, is to provide additional resources in support of human and mouse genomics, and perform characterizations supportive of genomic sequencing. The vectors for the libraries should be of the generic BAC (bacterial artificial chromosomes) type, supporting stable maintenance of their inserts in bacterial hosts. For a mouse library, the C57Bl/6J strain should be the source of the DNA, with a 10–15 fold genome coverage sought. There should be two sub-libraries, with DNA fragments generated by different restriction nucleases to diminish representation biases. Also to diminish representation biases, DNA breakage by shearing only is a desired substitute to breakage by restriction. If this improvement can be implemented quickly, both mouse and human libraries produced from sheared DNAs are sought. Companion quality control analyses must be specified. Separate applications are sought for more extensive characterization of the BACs by restriction fingerprinting, end sequencing of inserts, cDNA mapping onto BACs and/or other high throughput methodologies supportive of genomics projects.

The goal of (2), chemistries and biochemistries for DNA sequencing, is to further bring speed and economies to DNA sequencing through improvements in reagents such as enzymes, their substrates, reporting labels and related protocols.

The goal of (3), protocols and reagents for full length messenger RNA to cDNA production and sequencing, is to address outstanding needs in characterizing messenger RNA populations of tissues, as represented by more stable derivative libraries of cDNAs. Particularly for human sources, obtaining mRNAs with minimal degradation remains troublesome. For longer mRNAs, faithful conversion to cDNAs is problematic. Within completed libraries, identifying optimal representatives for complete sequencing is still time consuming and expensive. For cDNAs in the few kilobase size range, full length sequencing does not yet have the economies of sequencing longer DNAs. Applications which address these problem areas are sought. Reports on recent workshops on cDNAs can be accessed on the Internet through the WWW site http://www.ornl.gov/meetings/wccs/index.html.

The goal of (4), characterizing exceptional chromosomal regions including those near telomeres and centromers by sequencing and/or other relevant methodologies, recognizes that current sequencing strategies may prove inadequate for chromosomal regions which are troubled by abundant repeat structures, or are the boundaries of heterochromatin and euchromatin regions. Applications addressing these problem areas specifically as they apply to chromosomes 5, 16 and 19 are sought.

The goal of (5) computational processing of sequence information including viewing, curating, and integrating, seeks ways to more efficiently and more accurately assemble partial DNA sequences, to identify regions of biological significance, and to more efficiently utilize previously determined DNA sequence to identify polymorphisms and to characterize related but not yet sequenced DNA. An additional interest is identification of useful standards, which may include (but is not limited to) controlled vocabularies, data types, and annotation types. Standards development must proceed with user community input. A report on a May, 1998 workshop on informatics needs can be accessed on the Internet at: http://www.ornl.gov/TechResources/Human_Genome/publicat/hgn/v9n3/02doenih.html

Program Funding

It is anticipated that a total of $7,000,000 will be available for grant awards in this area during FY 1999 and FY 2000, contingent upon availability of appropriated funds. Multiple year funding of grant awards is expected, and is also contingent upon availability of funds, progress of the research, and continuing program need. Projected awards will be in the range of $50,000 per year up to $1,000,000 per year with terms of 2 to 3 years.

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project,
2. Appropriateness of the Proposed Method or Approach,
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources,
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR Part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to

the Guide and required forms is made available via the World Wide Web at: http://www.er.doe.gov/production/grants/grants.html. The Project Description must be 25 pages or less, exclusive of attachments. The application must contain an abstract or project summary, letters of intent from collaborators, and short curriculum vitaes consistent with NIH guidelines.

The Office of Science, as part of its grant regulations, requires at 10 CFR 605.11(b) that a recipient receiving a grant to perform research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health ''Guidelines for Research Involving Recombinant DNA Molecules'', which is available via the world wide web at: http://www.niehs.nih.gov/odhsb/biosafe/nih/nih97-1.html, (59 FR 34496, July 5, 1994), or such later revision of those guidelines as may be published in the **Federal Register**.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, D.C. on November 9, 1998.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 98–31367 Filed 11–23–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–51–002]

Algonquin Gas Transmission; Notice of Compliance Filing

November 18, 1998.

Take notice that on November 13, 1998, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets to become effective November 2, 1998:

Second Sub Third Revised Sheet No. 662 Sub Second Revised Sheet No. 715

Algonquin asserts that the above listed tariff sheets are being filed to comply with the Commission's Letter Order issued on October 29, 1998, in Docket Nos. RP99–51–000 and RP99–51–001 (October 29 Order).

Algonquin states that Sub Second Revised Sheet No. 715 filed herewith incorporates by reference sections (v) and (vi) of the Gas Industry Standards Board (GISB) standard 1.3.2 in compliance with the October 29 Order. Algonquin also states that Second Sub Third Revised Sheet No. 662 revises the No Bump Policy in Section 23.3 of the General Terms and Conditions to provide notice consistent with the Imposition of Flow Orders in Section 29.3 of the General Terms and Conditions in compliance with the October 29 Order.

Algonquin states that copies of the filing were mailed to all affected customers of Algonquin and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31287 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–54–001]

Carnegie Interstate Pipeline Company; Notice of Compliance Filing

November 18, 1998.

Take notice that on November 13, 1998, Carnegie Interstate Pipeline Company (CIPCO), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to be effective November 2, 1998:

Substitute Second Revised Sheet No. 102
Substitute First Revised Sheet No. 102A
Original Sheet No. 102B
Substitute Second Revised Sheet No. 103
Substitute Sixth Revised Sheet No. 146

CIPCO states that this filing is being made in compliance with Commission Order No. 587–H, issued by the Commission on July 15, 1998 and the Office of Pipeline Regulation's October 29, 1998 Letter Order in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31289 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–22–002]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 18, 1998.

Take notice that on November 9, 1998, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of November 1, 1998:

Substitute Seventeenth Revised Sheet No. 31
Second Substitute forty-first Revised Sheet No. 32
Second Substitute forty-first Revised Sheet No. 33
Substitute Fifteenth Revised Sheet No. 34

CNG states that the purpose of this filing is to comply with the Commission's October 29, 1998 Order on CNG's October 1, 1998 Transportation Cost Rate Adjustment (TCRA) filing. Specifically, CNG has modified rates on its enclosed tariff sheets to reflect the Commission's denial of requested waivers, to (1) include a projected amount for undercollected products extraction fuel costs, and (2) recover accumulated under-recovery of products extraction fuel costs in the reservation component of rates, rather than the usage component.

CNG states that copies of its letter of transmittal and enclosures are being mailed to the parties to the captioned proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the

Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31293 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–49–001]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 18, 1998.

Take notice that on November 13, 1998, CNG Transmission Corporation (CNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of November 2, 1998:

Sub. Third Revised Sheet No. 282
Sub. Fourth Revised Sheet No. 284
Sub. Second Revised Sheet No. 386A

CNG states that the purpose of this filing is to comply with the Commission's October 28, 1998 Letter Order in the referenced proceeding, regarding CNG's implementation of the business practice standards adopted by the Gas Industry Standards Board (GISB), as incorporated by reference in the Commission's regulations under Order Nos. 587–G and 587–H. To that end, CNG provides substitute tariff sheets and a corrected chart detailing CNG's compliance with each of the GISB business practice standards that have been adopted by the Commission.

CNG states that copies of this letter of transmittal and enclosures are being mailed to the parties to the captioned proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31297 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–66–000]

Columbia Gas Transmission; Notice of Request Under Blanket Authorization

November 18, 1998.

Take notice that on November 10, 1998, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030 filed in Docket No. CP99–66–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) is seeking NGA Section 7 certification for an existing point of delivery in Morgan County, Kentucky under Columbia's blanket certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia requests certification for the existing NGPA Section 311 point of delivery so it can provide both part 284, Subpart B, and Subpart G transportation. The existing point of delivery for which Columbia requests NGA certification under Sections 157.205 and 157.212 is for Jefferson Gas Transmission Company, Inc. (Jefferson Gas), the maximum daily quantity is 600 Dth, the annual quantity is 219,000 Dth and the end use of gas will be commercial. The transportation service to be provided through the existing point of delivery will be interruptible service provided under Columbia's Rate Schedule, Interruptible Transportation Service (ITS). Columbia states that the services to be provided through the interconnection will be provided on an interruptible basis and will not impact Columbia's existing design day and annual obligations to its customers as a result of the establishment of the new point of delivery.

Columbia constructed the existing point of delivery to Jefferson Gas in Morgan County, Kentucky, which was placed in service on January 17, 1997. The cost of constructing the existing point of delivery was $2,078. Facilities installed by Columbia included a 2-inch meter setting and a short length of interconnecting 2-inch pipeline.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31302 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–50–001]

Dauphin Island Gathering Partners; Notice of Proposed Changes in FERC Gas Tariff and Request For Waiver

November 18, 1998.

Take notice that on November 13, 1998, Dauphin Island Gathering Partners (DIGP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1 the tariff sheets listed below to become effective November 2, 1998. The modifications to the listed tariff sheets are proposed to comply with the Commission's letter order issued October 29, 1998.

Substitute Original Sheet No. 146A
Substitute Second Revised Sheet No. 226

DIGP also requests waiver of one aspect of Order No. 587–H.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section

385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31298 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–147–000]

Equitrans, L.P.; Notice of Section 4 Filing

November 18, 1998.

Take notice that on November 10, 1998, Equitrans, L.P. (Equitrans) tendered for filing pursuant to Section 4 of the Natural Gas Act, a notice of termination of facilities designated as the ''North Littleton gathering system'' in Monogalia and Wetzell Counties, West Virginia. Equitrans indicates that the Commission approved these facilities for abandonment in Docket No. CP98–650–000 (85 FERC ¶62,064). Equitrans states that these lines are being sold to Tri-County Oil & Gas Company. Equitrans requests that the proposed termination of service of the facilities be effective December 31, 1998. Equitrans maintains that no contract for transportation service with Equitrans will be canceled or terminated as a result of this abandonment.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. Under section 154.210 of the Commission's Regulation, all such motions or protests should be filed on or before November 23, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31291 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–9–001]

Gulf States Transmission Corporation; Notice of Compliance Filing

November 18, 1998.

Take notice that on November 16, 1998, Gulf States Transmission Corporation (Gulf States), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets, with an effective date of November 2, 1998:

First Revised Sheet No. 26
First Revised Sheet No. 50
Original Sheet No. 50A
Original Sheet No. 50B
Sub Second Revised Sheet No. 52
First Revised Sheet No. 53C
Sub Third Revised Sheet No. 58G

Gulf States states that the tendered sheets are filed in compliance with the Letter Order issued in this docket by the Commission on October 30, 1998.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31311 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-150-000]

High Island Offshore System; Notice of Proposed Changes in FERC Gas Tariff

November 18, 1998.

Take notice that on November 13, 1998, High Island Offshore System (HIOS), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective January 1, 1999.

Fourth Revised Sheet No. 1
Fifth Revised Sheet No. 64
First Revised Sheet No. 64A
Original Sheet No. 64B
Original Sheet No. 64C
Original Sheet No. 64D

HIOS asserts that it is filing the tariff sheets to implement a Cashout Procedure into it's tariff. This procedure will replace the current volumetric balancing which was requested by our customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31292 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–56–000]

LBU Joint Venture; Notice of Application

November 18, 1998.

Take notice that on November 6, 1998, LBU Joint Venture (LBU) P.O. Box 4423, Oak Ridge, Tennessee 37831, filed

in Docket No. CP99–56–000 an application pursuant to Section 7 of the Natural Gas Act and Section 284.224 of the Commission's Regulation for issuance of a blanket certificate of public convenience and necessity authorizing LBU as a Hinshaw natural gas company to provide natural gas storage service in interstate commerce and approval of market based rates, all as more fully set forth in the application on file with the Commission and open to public inspection.

LBU states that it is a joint venture comprised of Cambridge Resources, Inc. and P.D.C. Resources, Inc. and it provides storage services in Tennessee and is regulated by the Tennessee Regulatory Authority (TRA), with its rates and services subject to the jurisdiction of the TRA. LBU asserts that in 1994, it began development of the underground gas storage facility located in the Lick Branch Field, Scott County, Tennessee. LBU claims that the only pipeline connection that was then, and is now, available to the Lick Branch storage facility is an interconnection with the eight-inch diameter pipeline of Citizens Gas Utility District (Citizens), a municipality serving customers in North-Central Tennessee.

LBU also states that it commenced operations in December 1994, providing gas storage service to Tenneco Gas Marketing Company (Tenneco) under an August 31, 1994 agreement (Agreement) which provided that Tenneco had rights to all of the capacity of the storage facility. LBU indicates that Tenneco's interest in the Agreement was subsequently purchased by El Paso Energy Marketing (El Paso Marketing) and thereafter El Paso Marketing transferred its interest to Duke Energy and Trading Company (Duke Trading). LBU claims that Duke Trading currently provides capacity from the storage facility to three customers, each of which is located in Tennessee.

LBU explains that while it currently operates as a Hinshaw pipeline, certain issues which implicate Commission jurisdiction may arise in the future as a result of the open nature of the nation's gas industry and integration of intrastate and interstate markets. LBU states that it seeks, by this application, to be able to provide interstate storage service while retaining its status as a Hinshaw pipeline pursuant to Section 284.224.

Additionally, LBU requests, pursuant to Sections 284.122 and 284.123 of the Commission's regulations, approval of market-based rates. LBU asserts that its application includes a Market Power Analysis which demonstrates that market-based rates for LBU's Part 284 service are fair and equitable.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 8, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulation Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate, and permission and approval for the proposed abandonment, are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for LBU to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31301 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR94–9–003]

Michigan Consolidated Gas Company; Notice of Compliance Filing and Request for Extension of Time

November 18, 1998.

Take notice that on November 9, 1998, Michigan Consolidated Gas Company (MichCon), in compliance with the Commission's Order on Remand issued on October 19, 1998, filed rates for firm transportation service under its Section 284.224 blanket certificate. MichCon further requests that the effective date of such rates for existing contracts be postponed from the effective date directed by the Commission's Order on Remand, December 1, 1998, until March 1, 1999.

MichCon states this additional time would enable MichCon to address shipper concerns regarding existing contracts for Section 284.224 service, and to pursue settlement as suggested in the Commission's Order on Remand.

Any person desiring to be heard or protest said filing must file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All such motions or protests must be filed with the Secretary of the Commission on or before December 2, 1998. Copies of MichCon's submittal are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31304 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–70–002]

Michigan Gas Storage Company; Notice of Refiled FERC Gas Tariff Sheet

November 18, 1998.

Take notice that on November 16, 1998, Michigan Gas Storage Company (MGSCo) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sub Fourth Revised Tariff Sheet No. 54A.

MGSCo states that the filing is being made in compliance with Order No. 587–H, regarding Gas Industry Standards Board (GISB) standards, and a letter order issued in above-referenced docket on November 3, 1998. The letter order accepted the sheet effective November 2, 1998.

MGSCo states that copies of its filing has been mailed upon all customers and applicable state regulatory agencies and on all those on the official service lists in Docket Nos. RP97–152–000 and RP99–70–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31290 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–48–001]

National Fuel Gas Supply Corporation; Notice of Compliance Filing

November 18, 1998.

Take notice on November 13, 1998, National Fuel Gas Supply Corporation (National Fuel) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Fourth Revised Volume No. 1, which tariff sheets are enumerated in the filing. The proposed effective date for the tariff sheets is November 2, 1998.

National Fuel states that the purpose of the instant filing is to comply with the Commission's letter order issued on October 29, 1998, (the October 29 Order) in the above-referenced proceeding. The October 29 Order directed National Fuel to file revised tariff sheets to rectify certain matters with respect to National Fuel's October 2, 1998 filing made to comply with the Commission's Order No. 587–H issued July 15, 1998. Specifically, the revised tariff sheets address bumping notice procedures, incorporation of GISB standard 1.3.2 (i), (ii), (iii) and (iv), version 1.3 verbatim, incorporation of GISB standard 1.3.2(v) by reference in GT&C Section 30, and the reinstatement of GISB standards 1.3.3, 1.3.5 and 1.3.9 by reference in GT&C Section 30.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31286 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–415–001]

Overthrust Pipeline Company; Notice of Tariff Filing

November 18, 1998.

Take notice that on November 13, 1998, Overthrust Pipeline Company (Overthrust) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, the following tariff sheets, to be effective November 2, 1998.

Substitute Fourth Revised Sheet No. 67
Substitute Third Revised Sheet Nos. 67A and 67B
Substitute Second Revised Sheet No. 67C
Substitute Original Sheet Nos. 67D and 67E

Overthrust states that the filing is being made in compliance with the Commission's letter order issued October 30, 1998, (October 30 order) in Docket No. RP98–415–000.

On October 30, 1998, in Docket No. RP98–415–000, Overthrust was directed to make clarifications regarding intra-day nomination requirements to its September 24, 1998, filing in compliance with the Commission's Order No. 587–H issued July 15, 1998. This filing incorporated clarification of the requirements set forth in 18 CFR 284.10(c)(1)(i) into Overthrust's FERC Gas Tariff, First Revised Volume No. 1–A.

Overthrust stated that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31308 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–7–001]

Paiute Pipeline Company; Notice of Compliance Filing

November 18, 1998.

Take notice that on November 16, 1998, Paiute Pipeline Company (Paiute) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, to become effective November 2, 1998:

Substitute Second Revised Sheet No. 56C
Substitute First Revised Sheet No. 61A
Second Revised Sheet No. 89

Paiute asserts that the purpose of its filing is to effectuate changes to the General Terms and Conditions of Paiute's tariff to comply with Order No. 587–H and a letter order issued October 30, 1998 in Docket No. RP99–7–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc 98–31310 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–44–002]

Petal Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff

November 18, 1998.

Take notice that on November 13, 1998, Petal Gas Storage Company (Petal) tendered for filing, as part of its FERC Gas Tariff, First Revised Volume No. 1, Second Revised Sheet No. 113, Sub. Second Revised Sheet No. 116, Sub. Third Revised Sheet No. 129, Second Revised Sheet No. 115, First Revised Sheet No. 115A, Third Revised Sheet No. 116, and Alternative Sub. Third Revised Sheet No. 129, with a proposed effective date of November 2, 1998.

Petal asked that Second Revised Sheet No. 115, First Revised Sheet No. 115A, Third Revised Sheet No. 116, and Alternative Sub. Third Revised Sheet No. 129 become effective if, and only if, certain waivers Petal requests are denied.

Petal states that its filing is made in compliance with the directives of an October 29, 1998, Letter Order, as well as with Order No. 587–H, issued on July 15, 1998, in Docket No. RM96–1–008, requiring interstate pipelines to incorporate the most recent standards dealing with intra-day nominations and nomination and scheduling procedures promulgated by the Gas Industry Standards Board.

Second Revised Sheet No. 113 provides that Petal will provide bumped interruptible customers with notice of the bump by telephone and/or facsimile. Petal seeks waiver of the requirement that it adopt GISB standards 1.3.2(i) through (vi), containing intra-day nomination cycles, into its tariff because they would provide less flexibility than Petal's current practice of allowing nominations on four hours notice at any time during the day. Petal also states that the nomination timelines contained in those GISB standards do not conform to the manner in which an independent storage company, such as Petal, must do business.

However, if the Commission denies Petal's request for waiver, Petal asks that Second Revised Sheet No. 115, First Revised Sheet No. 115A, Third Revised Sheet No. 116, and Alternative Sub. Third Revised Sheet No. 129 be accepted with an effective date November 2, 1998.

To the extent that Petal's request for waiver from adopting the GISB 1.3.2 standards is denied, Petal requests waiver of the requirement, contained, in GISB standard 1.3.2(iv), that interruptible customers not be bumped by a 5:00 p.m. intra-day nomination.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31296 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–413–001]

Questar Pipeline Company; Notice of Tariff Filing

November 18, 1998.

Take notice that on November 13, 1998, Questar Pipeline Company (Questar) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of November 2, 1998:

Substitute Fourth Revised Sheet No. 75
Substitute Second Revised Sheet No. 75A
Substitute Third Revised Sheet Nos. 75B and 75C
Substitute Original Sheet Nos. 75D and 75E

Questar states that the filing is being made in compliance with the Commission's letter order issued October 30, 1998, (October 30 order) in Docket No. RP98–413–000.

On October 30, 1998, in Docket No. RP98–413–000, Questar was directed to make clarifications regarding intra-day nomination requirements to its September 23, 1998, filing in compliance with the Commission's Order No. 587–H issued July 15, 1998. This filing incorporated clarification of the requirements set forth in 18 CFR 284.10(c)(1)(i) into Questar's FERC Gas Tariff, First Revised Volume No. 1.

Questar stated that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31307 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–52–002]

Texas Eastern Transmission Corporation; Notice of Compliance Filing

November 18, 1998.

Take notice that on November 13, 1998 Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following revised tariff sheet to become effective November 2, 1998:

Sub Fifth Revised Sheet No. 681

Texas Eastern asserts that the above listed tariff sheet is being filed to comply with the Commission's Letter Order issued on October 29, 1998, in Docket Nos. RP99–52–000 and RP99–52–001 (October 29 Order).

Texas Eastern states that the above listed tariff sheet incorporates by reference sections (v) and (vi) of the Gas Industry Standards Board (GISB) standard 1.3.2 in compliance with the October 29 Order.

Texas Eastern states that copies of the filing were mailed to all affected customers of Texas Eastern and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission

in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31288 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–425–001]

Texas Gas Transmission Corporation; Notice of Filing of Tariff Sheets

November 18, 1998.

Take notice that on November 10, 1998 Texas Gas Transmission Corporation (Texas Gas) tendered for filing, as part of its FERC Gas Tariff, First Revised Volume No. 1:

Substitute Second Revised Sheet No. 206C
Substitute Ninth Revised Sheet No. 207

Texas Gas states that the instant filing revises specific tariff sheets to comply with the Commission's directives in the October 29, 1998, Order. Texas Gas has inserted language to incorporate the notification procedures for bumping, as granted by the Commission, which establishes Texas Gas to phone or facsimile, as elected by customer-elects, the notice of mid-day bumping of interruptible service. Furthermore, in compliance with the Order, Texas Gas, has filed a substitute sheet that separately identifies those standards and definitions promulgated by GISB on March 12, 1998, as Version 1.3, which have been incorporated by reference.

Texas Gas states that copies of the tariff sheets are being served upon Texas Gas's jurisdictional customers and interested state commissions, and all parties on the official service list in Docket No. RP98–425.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31339 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR99–1–000]

Transok, LLC; Notice of Petition for Rate Approval

November 18, 1998.

Take notice that on October 29, 1998, Transok, LLC (Transok) filed a petition for rate approval to continue its present rates in effect on and after November 1, 1998 for interruptible Section 311 transportation services on Transok's Traditional System in Oklahoma. The present rate is $0.2403 per MMBtu delivered.

Pursuant to Section 284.123(b)(2)(ii) of the Commission's regulations, if the Commission does not act within 150 days of the filing date, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed with the Secretary of the Commission on or before November 30, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31305 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR99–2–000]

Transok, LLC; Notice of Petition for Rate Approval

November 18, 1998.

Take notice that on October 29, 1998, Transok, LLC (Transok) filed a petition for rate approval to establish rates for interruptible Section 311 transportation services on Transok's Oklahoma Transmission System (formerly Transok's Traditional and Anadarko Systems). Transok asks that the rates become effective the first day of the month following the month in which the Commission issues an order approving the Oklahoma Transmission System rates.

Transok presently offers transportation services to interstate and intrastate customers on its Traditional and Anadarko Systems. In this filing, Transok proposes to offer one combined interruptible transportation rate of $0.7533 per MMBtu.

Pursuant to Section 284.123(b)(2)(ii) of the Commission's regulations, if the Commission does not act within 150 days of the filing date, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed with the Secretary of the Commission on or before November 30, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31306 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–424–001]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

November 18, 1998.

Take notice that on November 13, 1998, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets:

Effective November 2, 1998
Substitute Original Sheet No. 230B
Effective November 3, 1998
Substitute First Revised Sheet No. 230B

Williams states that on September 30, 1998, it made a filing in compliance with Order No. 587–H. By letter order (order) issued October 30, 1998, the Commission directed Williams to file revised tariff sheets stating that (1) it will provide advance notice of bumping to interruptible shippers and notify the interruptible shippers whether penalties will apply on the day their volumes are reduced, (2) it will waive non-critical penalties for bumped shippers on the day of the bump, and (3) it will provide notice of bumping in the same manner as it currently provides notice of OFO's. The instant filing is being made to comply with the order.

Williams states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the docket referenced above and on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31294 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–11–001]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

November 18, 1998.

Take notice that on November 12, 1998, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet, with the proposed effective date of November 1, 1998:

Substitute First Revised Sheet No. 271C

Williams states that it made a filing on October 1, 1998, in the above referenced docket, to establish procedures to be used in conducting a second reverse auction. By order issued October 28, 1998, the Commission directed Williams to clarify its proposed tariff to provide that a non-affiliated party will win in the event of a tie between an affiliated and non-affiliated bidder. The instant filing is being made to comply with the order.

Williams states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the dockets referenced above and on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31295 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–5–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

November 18, 1998.

Take notice that on November 9, 1998, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective November 9, 1998:

Fourteenth Revised Sheet No. 776
Eighteenth Revised Sheet No. 777
Fourteenth Revised Sheet No. 825
Nineteenth Revised Sheet No. 827
Twenty-eighth Revised Sheet No. 831

Williston Basin states that the revised tariff sheets are being filed simply to update its Master Receipt/Delivery Point List.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commssion, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 98–31303 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–2–001]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

November 18, 1998.

Take notice that on November 13, 1998, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the

following revised tariff sheets to become effective November 2, 1998:

Substitute Fifth Revised Sheet No. 227
Sub Fourth Revised Sheet No. 227A
Sub First Revised Sheet No. 227A.1
Original Sheet No. 227A.1a
Substitute Original Sheet No. 227A.2
Fifth Revised Sheet No. 248A
Sixth Revised Sheet No. 248C
Fifth Revised Sheet No. 252
Third Revised Sheet No. 252B
Substitute Fifth Revised Sheet No. 371

Williston Basin states that the revised tariff sheets reflect modifications to Williston Basin's FERC Gas Tariff in compliance with the Commission's Order No. 587–H issued July 15, 1998, in Docket No. RM96–1–008, and the Commission's Letter Order issued October 30, 1998 in Docket No. RP99–2–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31309 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DR99–1–000, et al.]

South Carolina Electric & Gas Company, et al.; Electric Rate and Corporate Regulation Filings

November 16, 1998.

Take notice that the following filings have been made with the Commission:

1. South Carolina Electric & Gas Co.

[Docket No. DR99–1–000]

Take notice that on November 2, 1998, South Carolina Electric & Gas Company (SCE&G), tendered for filing a request for approval of depreciation rates for accounting purposes only pursuant to Section 302 of the Federal Power Act and Rule 204 of the Commission's Rules of Practice and Procedure. SCE&G states that the proposed rates were approved by the Public Service Commission of South Carolina, retroactive to January 15, 1996.[1] SCE&G requests that the Commission allow the proposed depreciation rates to become effective as of January 15, 1996.

Comment date: December 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Cabazon Power Partners LLC

[Docket No. EG99–21–000]

Take notice that on November 10, 1998, Cabazon Power Partners LLC, 13000 Jameson Road, Tehachapi, California 93561, tendered for filing with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Cabazon Power Partners LLC, an indirect wholly-owned subsidiary of Enron Wind Corp., is developing a wind turbine generation facility in the San Gorgonion Pass near Cabazon, California, with a name plate capacity of approximately 40 MW. Cabazon Power Partners LLC plans to sell power to Southern California Edison Company.

Comment date: November 30, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Zond Cabazon Development Corp.

[Docket No. EG99–22–000]

Take notice that on November 10, 1998, Zond Cabazon Development Corporation, 13000 Jameson Road, Tehachapi, California 93561, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Zond Cabazon Development Corporation, an indirect wholly-owned subsidiary of Enron Wind Corp., is developing a wind turbine generation facility in the San Gorgonion Pass near Cabazon, California, with a name plate capacity of approximately 40 MW. Zond Cabazon Development Corporation plans to sell power from the Facility to Southern California Edison Company.

Comment date: November 30, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Sierra Pacific Power Co.

[Docket No. ER98–12–000]

Take notice that on November 10, 1998, Sierra Pacific Power Company (Sierra), in accordance with the Commission's November 2, 1998, order in the above-referenced docket, submitted its compliance refund report for approval.

Comment date: November 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–31312 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–P

[1] On December 23, 1997, SCE&G submitted a request for approval of changes in depreciation rates for accounting purposes (Docket No. DR98–18–000 (unnoticed)). The request indicated that SCE&G was seeking an extension of the filing deadline pending resolution of an appeal of an order in its last Public Service Commission (PSC) of South Carolina retail rate filing proceeding (Docket No. 95–1000–E, Order No. 96–15). In the Order, the PSC granted the Company a change in depreciation rates that contemplated the effects of a transfer of depreciation reserves from transmission and distribution to nuclear production assets. The Consumer Advocate for the State of South Carolina and another intervenor appealed the reserve transfer issue. In March 1998 the PSC and the appellants reached a settlement wherein the reserve transfer would be reversed. Also, the Order approved revised depreciation rates for nuclear production, transmission, and distribution assets that exclude the effect of the reserve transfer, retroactive to January 15, 1996, the effective date of the original PSC Order. This request reflects the PSC approved action.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2651–000]

Indiana Michigan Power Company; Notice of Intent to Prepare an Environmental Assessment and Notice of Solicitation of Written Scoping Comments

November 18, 1998.

The Federal Energy Regulatory Commission (Commission) has received an application from Indiana Michigan Power Company (IMPC) to relicense the Elkhart Hydroelectric Project No. 2651. The 3.44-megawatt (MW) project is located on the St. Joseph River near Elkhart, in Elkhart County, Indiana.

The application is available at the Commission's Internet Website at www.ferc.fed.us.

The Commission intends to prepare an Environmental Assessment (EA) for the project in accordance with the National Environmental Policy Act.

In the EA, we will consider reasonable alternatives to the project as proposed by IMPC, and analyze both site-specific and cumulative environmental impacts of the project as well as economic and engineering impacts.

A draft EA will be issued and circulated to those on the mailing list for this project. The staff will analyze all comments filed on the draft EA and consider them in the final EA. The staff's conclusions and recommendations presented in the final EA will then be presented to the Commission to assist in making a licensing decision.

Scoping

We are asking agencies, Native American tribes, non-governmental organizations, and individuals to help us identify the scope of environmental issues that should be analyzed in the EA, and to provide us with information that may be useful in preparing the EA.

To help focus comments on the environmental issues, a scoping document outlining subject areas to be addressed in the EA will soon be mailed to those on the mailing list for the project. Those not on the mailing list may request a copy of the scoping document from the project coordinator, whose telephone number is listed below.

Those with comments or information pertaining to this project should file it with the Commission at the following address: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The comments and information are due to the Commission within 60 days from the issuance date of the scoping document. All filings should clearly show the following on the first page: Elkhart Hydroelectric Project, FERC No. 2651.

Intervenors are reminded of the Commission's Rules of Practice and Procedure that require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, it must also serve a copy of the document on that resource agency.

Questions regarding this notice may be directed to E.R. Meyer, Project Coordinator, at (202) 208–7998.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 98–31300 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 597–003]

PacifiCorp; Notice of Intent To Prepare an Environmental Assessment and Notice of Solicitation of Written Scoping Comments

November 18, 1998.

The Federal Energy Regulatory Commission (Commission) has received an application from PacifiCorp to relicense the Stairs Hydroelectric Project No. 597–003. The 1,200-kilowatt project is located on the Big Cottonwood Creek in Big Cottonwood Canyon, Salt Lake County, near the town of Sandy, about 15 miles southeast of downtown Salt Lake City, Utah. The project occupies about 8.7 acres of land within the Wasatch—Cache National Forest, administered by the U.S. Forest Service (FS).

The Commission intends to prepare an Environmental Assessment (EA) for the project in accordance with the National Environmental Policy Act.

In the EA, we will consider reasonable alternatives to the project as proposed by PacifiCorp, and analyze both site-specific and cumulative environmental impacts of the project, as well as, economic and engineering impacts.

The draft EA will be issued and circulated to those on the mailing list for this project. All comments filed on the draft EA will be analyzed by the staff and considered in a final EA. The staff's conclusions and recommendations presented in the final EA will then be presented to the Commission to assist in making a licensing decision.

Scoping

We are asking agencies, Indian tribes, non-governmental organizations, and individuals to help us identify the scope of environmental issues that should be analyzed in the EA, and to provide us with information that may be useful in preparing the EA.

To help focus comments on the environmental issues, a scoping document outlining subject areas to be addressed in the EA will soon be mailed to those on the mailing list for the project. Those not on the mailing list may request a copy of the scoping document from the project coordinator, whose telephone number is listed below. A copy of the scoping document may also be viewed or printed by accessing the Commission's WebSite on the Internet at www.ferc.fed.us. For assistance, users can call (202) 208–2222.

Those with comments or information pertaining to this project should file it with the Commission at the following address: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The comments and information are due to the Commission within 60 days from the issuance date of the scoping document. All filings should clearly show the following on the first page: Stairs Hydroelectric Project, FERC No. 597–003.

Intervenors are reminded of the Commission' Rules of Practice and Procedure which require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Any questions regarding this notice may be directed to Gaylord W.

Hoisington, project coordinator, at (202) 219–2756.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31299 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Cases Filed During the Week of October 5 Through October 9, 1998

During the Week of October 5 through October 9, 1998, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585–0107.

Dated: November 12, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

SUBMISSION OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

Date	Name and location of applicant	Case No.	Type of submission
10/5/98	Personnel Security Hearing	VSO–0239	Request for Hearing under 10 CFR Part 710. If Granted: An individual employed by a contractor of the Department of Energy would receive a hearing under 10 CFR Part 710.
10/6/98	Personnel Security Hearing	VSO–0240	Request for Hearing under 10 CFR Part 710. If Granted: An individual employed by a contractor of the Department of Energy would receive a hearing under 10 CFR Part 710.
10/6/98	Personnel Security Hearing	VSO–0241	Request for Hearing under 10 CFR Part 710. If Granted: An individual employed by the Department of Energy or by a contractor of the Department of Energy would receive a hearing under 10 CFR Part 710.

[FR Doc. 98–31357 Filed 11–23–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Cases Filed; Office of Hearings and Appeals Week of September 28 Through October 2, 1998

During the Week of September 28 through October 2, 1998, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585–0107.

Dated: November 12, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals

Submission of Cases Received by the Office of Hearings and Appeals Department of Energy

Week of September 28 through October 2, 1998

Date	Name and location of applicant	Case No.	Type of submission
9/28/98	Cliff Sieling, Richland, Washington	VFA–0446	Appeal of an Information Request Denial. If Granted: The August 25, 1998 Freedom of Information Request Denial issued by the Richland Operations Office would be rescinded, and Cliff Sieling would receive access to certain DOE information.
9/29/98	Tod N. Rockefeller, Deerfield Beach, Florida	VFA–0447	Appeal of an Information Request Denial. If Granted: The September 24, 1998; Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded, and Tod N. Rockefeller would receive access to certain DOE information.
9/30/98	Personnel Security Hearing	VSO–0236	Request for Hearing under 10 CFR Part 710. If Granted: An individual employed by the Department of Energy or by a contractor of the Department of Energy would receive a hearing under 10 CFR Part 710.
9/30/98	Personnel Security Hearing	VSO–0237	Request for Hearing under 10 CFR Part 710. If Granted: An individual employed by the Department of Energy or by a contractor of the Department of Energy would receive a hearing under 10 CFR Part 710.
9/30/98	Personnel Security Review	VSA–0207	Request for Review under 10 CFR Part 710. If Granted: The August 24, 1998 Opinion of the Office of Hearings and Appeals, Case No. VSO–0207, would be reviewed at the request of an individual employed by the Department of Energy or by a contractor of the Department of Energy.

Date	Name and location of applicant	Case No.	Type of submission
10/1/98	Hans M. Kristensen, Richmond, California ..	VFA–0448	Appeal of an Information Request Denial. If Granted: The September 10, 1998 Freedom of Information Request Denial issued by the Office of the Secretariat would be rescinded, and Hans M. Kristensen would receive access to certain DOE information.
10/1/98	Personnel Security Hearing	VSO–0238	Request for Review under 10 CFR Part 710. If Granted: An individual employed by the Department of Energy or by a contractor of the Department of Energy would receive a hearing under 10 CFR Part 710.

[FR Doc. 98–31358 Filed 11–23–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Cases Filed

Office of Hearings and Appeals During the Week of August 17 Through August 21, 1998

During the Week of August 17 through August 21, 1998, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585–0107.

Dated: November 12, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Submission of Cases Received by the Office of Hearings and Appeals Department of Energy

Week of August 17 through August 21, 1998

Date	Name and Location of Applicant	Case No.	Type of Submission
8/18/98	Personnel Security Hearing	VSO–0229	Request for Hearing under 10 C.F.R. Part 710. If Granted: An individual employed by the Department of Energy or by a contractor of the Department of Energy would receive a hearing under 10 C.F.R. Part 710.
8/18/98	Personnel Security Hearing	VSO–0230	Request for Hearing under 10 C.F.R. Part 710. If Granted: An individual employed by the Department of Energy or by a contractor of the Department of Energy would receive a hearing under 10 C.F.R. Part 710.
8/19/98	Star Foundation, East Hampton, NY	VFA–0440	Appeal of an Information Request Denial. If Granted: The June 23, 1998 Freedom of Information Request Denial issued by the Brookhaven Graphite Research Reactor would be rescinded and Star Foundation would receive access to certain DOE information.
8/21/98	Personnel Security Hearing	VSO–0231	Request for Hearing under 10 C.F.R. Part 710. If Granted: An individual employed by the Department of Energy or by a contractor of the Department of Energy would receive a hearing under 10 C.F.R. Part 710.

[FR Doc. 98–31359 Filed 11–23–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Cases Filed; Week of July 13 Through July 17, 1998

During the Week of July 13 through July 17, 1998, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585–0107.

Dated: November 12, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Submission of Cases Received by the Office of Hearings and Appeals Department of Energy

Week of July 13 Through July 17, 1998

Date	Name and location of applicant	Case No.	Type of submission
7/13/98	Bernice McCulloh, Winston-Salem, NC	VFA–0427	Appeal of an Information Request Denial. If Granted: The June 23, 1998 Freedom of Information Request Denial issued by the Oak Ridge Operations Office would be rescinded, and Bernice McCulloh would receive access to certain DOE information.

Date	Name and location of applicant	Case No.	Type of submission
7/13/98	Personnel Security Hearing	VSO–0222	Request for Hearing under 10 CFR Part 710. If Granted: An individual employed by the Department of Energy or by a contractor of the Department of Energy would receive a hearing under 10 CFR Part 710.
7/14/98	Personnel Security Review	VSA–0186	Request for Review of Opinion under 10 CFR Part 710. If Granted: The June 2, 1998 Opinion of the Office of Hearings and Appeals, Case No. VSO–0186, would be reviewed at the request of an individual employed by the Department of Energy or by a contractor of the Department of Energy.
7/16/98	Mark Donham, Brookport, Illinois	VFA–0428	Appeal of an Information Request Denial. If Granted: The Department of Energy would issue a determination regarding Mark Donham's Freedom of Information requests, and he would receive access to certain DOE information.

[FR Doc. 98–31360 Filed 11–23–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Cases Filed During the Week of July 6 Through July 10, 1998

During the Week of July 6 through July 10, 1998, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585–0107.

Dated: November 12, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Submission of Cases Received by the Office of Hearings and Appeals, Department of Energy

Week of July 6 Through July 10, 1998

Date	Name and location of applicant	Case No.	Type of submission
7/6/98	John Gilmore, Berkeley, California	VFA–0425	Appeal of an Information Request Denial. If Granted: The Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded, and John Gilmore would receive access to certain DOE information.
7/6/98	Personnel Security Hearing	VSO–0219	Request for Hearing under 10 CFR Part 710. If Granted: An individual employed by the Department of Energy or by a contractor of the Department of Energy would receive a hearing under 10 C.F.R. Part 710.
7/6/98	Personnel Security Hearing	VSO–0220	Request for Hearing under 10 CFR Part 710. If Granted: An individual employed by the Department of Energy or by a contractor of the Department of Energy would receive a hearing under 10 C.F.R. Part 710.
7/7/98	Personnel Security Hearing	VSO–0221	Request for Hearing under 10 CFR Part 710. If Granted: An individual employed by the Department of Energy or by a contractor of the Department of Energy would receive a hearing under 10 C.F.R. Part 710.
7/10/98	Arnold Kramish, Reston, Virginia	VFA–0426	Appeal of Information Request Denial. If Granted: The Freedom of Information Request Denial issued by the Office of the Executive Secretariat would be rescinded, and Arnold Kramish would receive access to certain DOE information.

[FR Doc. 98–31366 Filed 11–23–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders; Week of October 12 Through October 16, 1998

During the week of October 12 through October 16, 1998, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW., Washington, D.C. 20585–0107, Monday through Friday, except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: November 12, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 107—Week of October 12 Through October 16, 1998

Refund Applications

Apex Oil/Clark Oil Co./Kickapoo Oil Co., Inc., 10/13/98, RF342–284

The DOE denied a refund application filed in the Apex/Clark special refund proceeding. The OHA found that applicant is precluded by the doctrine of *res judicata* from relitigating its claims in Apex/Clark proceeding.

Atlantic Richfield Company/Saturn Petroleum Company, 10/13/98, RF304–15516

A refund that was granted to Saturn Petroleum Company in the ARCO refund proceeding was rescinded. The original refund had been based upon the firm's claim to have purchased about 300,000 gallons of ARCO products per month at each of four retail outlets between 1973 and 1976. However, a review of information that the firm had submitted in the Texaco refund proceeding indicated that these outlets had not purchased ARCO products for most of the time period the firm had claimed and the monthly volume of ARCO purchases had been much lower. The firm failed to respond to an Order to Show Cause why the refund should not be rescinded in full. Accordingly, the firm was ordered to repay the refund together with interest.

State Escrow Distribution, 10/14/98, RF302–21

The Office of Hearings and Appeals ordered the DOE's Office of the Controller to distribute $24,150,000 to the State Governments. The use of the funds by the States is governed by the Stripper Well Settlement Agreement.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Co./Mike's Fuel Oil Co., et al	RF304–14663	10/15/98
Bureau Valley Comm. Dist. #340	RK272–01819	10/14/98
Crude Oil Supplemental Refunds	RB272–00145	10/14/98
Harrison County Road Dept., et al	RF272–94137	10/14/98
Lincoln County	RK272–03576	10/14/98
Santa Cruz County Off. Eductn	RF272–96310	10/14/98
Larry R. or Debra F. Garner	RF272–96328	.....
St. Mary of Mt. Carmel Church, et al	RF272–98909	10/15/98

Dismissals

The following submissions were dismissed.

Name	Case No.
Personnel Security Hearing	VSO–0234
Redway Carriers, Inc	RK272–04832

[FR Doc. 98–31361 Filed 11–23–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Issuance of Decisions and Orders During the Week of August 10 Through August 14, 1998

Office of Hearings and Appeals

During the week of August 10 through August 14, 1998, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, D.C. 20585–0107, Monday through Friday, except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: November 12, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 98

Week of August 10 Through August 14, 1998

Appeals

Arnold Kramish, 8/11/98, VFA–0426

Arnold Kramish appealed a determination of FOIA/Privacy Act Division of the Office of the Executive Secretariat. He had requested copies of all personnel records the DOE possesses

concerning Robert and Charlotte Serber. The DOE confirmed that no DOE offices possess responsive information beyond the information the DOE already provided to Mr. Kramish. Accordingly, the DOE denied Mr. Kramish's appeal.

Gary A. Davis, 8/14/98, VFA–0429

The DOE granted a Freedom of Information Act Appeal filed by Gary A. Davis. Davis sought a further search for responsive documents by the Oak Ridge Operations Office. DOE found that Oak Ridge failed to adequately explain why it did not find or release a document DOE and had not appropriately justified the adequacy of its search. Accordingly, the matter was remanded to Oak Ridge.

International Brotherhood of Electrical Workers, 8/11/98 VFA–0421

International Brotherhood of Electrical Workers appealed a Determination issued to it by the Savannah River Operations Office (SR), in response to a request under the Freedom of Information Act (FOIA). The Appellant sought information concerning SR's and Wackenhut Services, Inc.'s activities concerning a union election that the Appellant participated in. The Appellant argued that SR's refusal to release certain withheld information was improper, SR's search was inadequate, and that SR should have granted the Appellant a fee waiver or reduced its fees. The Appellant also appealed an earlier FOIA determination by SR of a different request. DOE found with regard to the earlier request that SR had correctly determined that the responsive records were contractor, not agency, records. DOE upheld SR's denial of a fee waiver, and found with the exception of some improper photocopying charges, most of the fees charged to be reasonable. DOE further found that SR had (1) made an inadequate determination regarding some requested videos and that it must conduct a further search, (2) improperly withheld a contractor-prepared document under Exemption 5 because it was neither intra-agency nor inter-agency, (3) some portions of attorney billing records were incorrectly withheld under Exemption 4, and (4) had made an inadequate determination regarding its Exemption 4 withholding of a labor consultant's normal rates. Accordingly, the Appeal of SR's determination was granted in part.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

American Colloid Co	RK272–4531	8/14/98
Amertex Service Group	RK272–04833	8/14/98
Englewood City Board of Educ et al	RF272–96301	8/14/98
Enron Corp./Liquid Petroleum Corp	RR340–00006	8/11/98
Randolph Township Brd of Educ. et al	RK272–04834	8/14/98

[FR Doc. 98–31362 Filed 11–23–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of August 3 Through August 7, 1998

During the week of August 3 through August 7, 1998, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, D.C. 20585–0107, Monday through Friday, except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: November 12, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 97

Week of August 3 Through August 7, 1998

Refund Application

ENRON CORP./MAPCO, INC., 8/3/98, RF340–149

DOE granted a refund to MAPCO, Inc. (MAPCO) in the Enron Corporation (Enron) special refund proceeding. DOE concluded that MAPCO's NGL purchases were not discretionary in nature, and were dictated by the firm's need to supply its regular customers and maintain the flow of product in its pipeline system. However, DOE excluded purchases of ethane because they were insufficiently documented. DOE also excluded certain quantities of natural gasoline that appear to have been purchased pursuant to a fixed price contract. DOE then found that MAPCO had shown that it was injured by its purchases of propane from Enron to some extent, but limited the firm's refund to approximately 85.5% of its full volumetric refund for that product.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Army & Air Force Exch Svc	RF272–16333	8/3/98
Crude Oil Supplemental	RB272–00139	8/5/98
Crude Oil Supple Ref Dist	RB272–00141	8/6/98
Great Western Onshore Inc.	RF272–75456	8/3/98
Grooms Oil Co. Inc.	RF272–99087	
Valley Farmers Co-Op, Inc. et al	RF272–98907	8/5/98

Dismissals

The following submissions were dismissed.

Name	Case No.
Ellzey & Brooks, LLC	VFA–0433
Michael Ares	VWA–0022
Personnel Security Hearing	VSO–0210

[FR Doc. 98–31363 Filed 11–23–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of July 20 Through July 24, 1998

During the week of July 20 through July 24, 1998, the decision and order summarized below was issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy.

Copies of the full text of this decision and order is available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, DC 20585–0107, Monday through Friday, except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: November 12, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 95

Week of July 20 Through July 24, 1998

Refund Application

ENRON CORP./APEX OIL CO., 7/22/98 RF340–136

The DOE denied a refund application filed by Apex Oil Company in the Enron Corporation refund proceeding. The DOE determined that Apex was a spot purchaser of Enron product and that Apex had not rebutted the spot purchaser presumption of non-injury.

[FR Doc. 98–31364 Filed 11–23–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of July 27 Through July 31, 1998

During the week of July 27 through July 31, 1998, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, D.C. 20585–0107, Monday through Friday, except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: November 12, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 96—Week of July 27 Through July 31, 1998

Appeals

Charles W. Hemingway, 7/31/98, *VFA–0424*

DOE denied a Freedom of Information Act (FOIA) Appeal filed by Charles W. Hemingway. Hemingway contended that the redacted information was wrongfully withheld under Exemption 6 of the FOIA because he filed his request under the Ethics in Government Act (EGA), to which FOIA exemptions are inapplicable. OHA dismissed this portion of the Appeal because it lacks jurisdiction to consider matters arising under the EGA. DOE denied Hemingway's claim that it had waived the right to withhold a social security number under Exemption 6 by previously releasing it in a proceeding before the Merit Systems Protection Board. DOE held that the submission to the MSPB did not dissolve the employee's privacy right.

Edwin S. Rothschild, 7/28/98, *VFA–0423*

The DOE denied a Freedom of Information Act (FOIA) Appeal filed by the Edwin S. Rothschild. Rothschild sought documents used to prepare a report to Congress pertaining to consideration of a regional petroleum product reserve. Responsive documents were located by the Office of the Deputy Assistant Secretary for Strategic Petroleum Reserves (SPR), but were withheld under Exemption 5. Rothschild argued that release of the report mandated release of the preparatory material. DOE found that the status of the documents as predecisional was not altered by the release of the final report, DOE and that SPR had articulated the foreseeable harm that would result from release of the requested documents.

Personnel Security

Personnel Security Review, 7/29/98, *VSA–0186*

The Director of OHA issued an Opinion regarding the eligibility of an individual to maintain access authorization. The Director agreed with the Hearing Officer that the individual had failed to mitigate security concerns regarding his alcohol abuse, because while the individual had agreed not to use alcohol while participating in the Employee Assistance Program (EAPRO), he did so on ten occasions, and then lied about that use to his EAPRO counsel on eight occasions. Accordingly, the Director recommended that the individual's access authorization not be restored.

Refund Application

Good Hope Refineriers/Apex Oil Company 7/31/98, *RF339–12*

DOE considered an Application for Refund filed by Apex Oil Company in the Good Hope Refineries Special Refund Proceeding. DOE denied that portion of the application based on Apex's purchases of middle distillates during the period, August 19, 1973 through July 31, 1976, because Apex was a spot purchaser during this period and had failed to rebut the spot purchaser presumption of non-injury. DOE granted Apex a refund based on Apex's purchases of 500,241,901 gallons of motor gasoline during the period, August 1976 through July 31, 1979. DOE found that Apex had demonstrated injury by showing it had positive banks of unrecovered increased product costs in excess of the refund sought, and had suffered a competitive disadvantage as a result of its purchases from Good Hope.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Crude Oil Supple	RB272–00140	7/31/98
Donald Claunch	RR272–308	7/28/98
Donald Claunch	RR272–309	
Philippine Government	RG272–754	7/31/98

Dismissals

The following submissions were dismissed.

Name	Case No.
Mark Donham	VFA–0428
Personnel Security Hearing	VSO–0213

[FR Doc. 98–31365 Filed 11–23–98; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

OPPTS–140276; FRL–6045–5

Access to Confidential Business Information by ABT Associates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, ABT Associates (ABT), of 55 Wheeler Street, Cambridge, Massachusetts and ABT's subcontractor Eastern Research Group (ERG), of 110 Hartwell Avenue, Lexington, Massachusetts, for access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data will occur no sooner than December 4, 1998.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under contract number 68–W98–005, contractor ABT Associates of 55 Wheeler Street, Cambridge, MA and its subcontractor ERG of Lexington, MA, will assist the Office of Pollution Prevention and Toxics (OPPT) in conducting economic and regulatory impact analysis to support all aspects of EPA decision-making.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W98–005, ABT and ERG will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. ABT and ERG personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide ABT and ERG access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters; ABT Associates of 4800 Montgomery Lane, Suite 400, Room 413B, Bethesda, MD and ABT Associates of 55 Wheeler St., Cambridge, MA facilities; and at Eastern Research Group of 110 Hartwell Avenue, Lexington, MA, and Eastern Research Group of Avion Lakeside D, 14555 Avion Parkway, Chantilly, VA facilities.

ABT and ERG will be authorized access to TSCA CBI at their facilities, provided they comply with the provisions of the EPA *TSCA Confidential Business Information Security Manual.*

Before access to TSCA CBI is authorized at ABT and ERG's sites, EPA will perform the required inspection of its facilities, and ensure that these facilities are in compliance with the Manual. Upon completing review of the CBI materials, ABT and ERG will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until September 30, 2002.

ABT and ERG personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: November 12, 1998.

Deborah A. Williams,

Acting Director, Information Management Division, Pollution Prevention and Toxics.

[FR Doc. 98–31391 Filed 11–23–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00253; FRL–6045–8]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: A meeting of the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Committee) will be held on December 7–9, 1998, in Washington, DC. At this meeting, the NAC/AEGL Committee will address, as time permits, the various aspects of the acute toxicity and the development of Acute Exposure Guideline Levels (AEGLs) for the following chemicals: Cyclohexylamine, ethylene oxide, HFC–134a, HCFC–141b, hydrogen sulfide,

piperidine, propionitrile, propylene oxide, and sulfur dioxide.

DATES: A meeting of the NAC/AEGL Committee will be held from 10 a.m. to 5 p.m. on Monday, December 7; from 8 a.m. to 4:45 p.m. on Tuesday, December 8; and from 8 a.m. to 12:30 p.m. on Wednesday, December 9, 1998.

ADDRESSES: The meeting will be held in the Governor's House Hotel, 1615 Rhode Island Ave., NW., Washington, DC (near the Farragut North Metro stop).

FOR FURTHER INFORMATION CONTACT: Paul S. Tobin, Designated Federal Officer (DFO), Office of Prevention, Pesticides, and Toxic Substances (7406), 401 M St., SW., Washington, DC 20460, telephone: (202) 260–1736, e-mail address: tobin.paul@epa.gov.

SUPPLEMENTARY INFORMATION: For additional information on the scheduled meeting, the agenda of the NAC/AEGL Committee, or the submission of information on chemicals to be discussed at the meeting, contact the DFO under ''FOR FURTHER INFORMATION CONTACT.''

The meeting of the NAC/AEGL Committee will be open to the public. Oral presentations or statements by interested parties will be limited to 10 minutes. Interested parties are encouraged to contact the DFO to schedule presentations before the NAC/AEGL Committee. Since seating for outside observers may be limited, those wishing to attend the meeting as observers are also encouraged to contact the DFO at the earliest possible date to ensure adequate seating arrangements. Inquiries regarding oral presentations and the submission of written statements or chemical specific information should be directed to the DFO.

List of Subjects

Environmental protection, Hazardous substances, Health.

Dated: November 16, 1998.

William H. Sanders, III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 98–31394 Filed 11–23–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6192–5]

Operating Industries, Inc. Landfill Superfund Site; Notice of Proposed CERCLA Administrative De Minimis Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), the Environmental Protection Agency (''EPA'') is hereby providing notice of proposed administrative *de minimis* settlement concerning the Operating Industries, Inc. Landfill Superfund site in Monterey Park, California (the ''OII Site''). Section 122(g) of CERCLA, 42 U.S.C. 9622(g), provides EPA with the authority to enter into administrative *de minimis* settlements. This settlement is intended to resolve the liabilities of 324 settling parties for the OII Site under CERCLA and section 7003 of the Resource Consevation and Recovery Act (''RCRA''), 42 U.S.C. 6973. The settlement will also resolve OII Site-related claims by California Department of Toxic Substances Control against the settling parties. The settling parties will pay a total of $24,886,191 toward OII Site response costs.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. In accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d), commenters may request an opportunity for a public meeting in the affected area. EPA will consider all comments it receives during this period, and may modify or withdraw its consent to the settlement if any comments disclose facts or considerations indicating that the settlement is inappropriate, improper, or inadequate.

DATES: Comments must be submitted on or before December 24, 1998.

ADDRESSES: Comments and requests for a public meeting should be addressed to the Regional Hearing Clerk, U.S. EPA Region IX (ORC–1), 75 Hawthorne Street, San Francisco, CA 94105, and should refer to: Operating Industries, Inc. Landfill Superfund Site, Monterey Park, CA, U.S. EPA Docket No. 98–13. The proposed settlement and additional background information relating to the settlement are available for inspection, and EPA's response to any comments received will be available for inspection, at the U.S. EPA Region IX Superfund Records Center, 95 Hawthorne Street, Suite 403 S, San Francisco, CA 94105; at the Bruggemeyer Memorial Library, 318 South Ramona Avenue, Monterey Park, CA 91754; the Montebello Regional Library, 1550 West Beverly Boulevard, Montelbello, CA 90640; and the Chet Holifield Library, 1060 South Greenwood Avenue, Montebello, CA 90640. A copy of the proposed Administrative Order on Consent may be obtained from the Regional Hearing Clerk at the address provided above.

FOR FURTHER INFORMATION CONTACT: Arthur Haubenstock, Assistant Regional Counsel, U.S. EPA Region IX (ORC–3), 75 Hawthorne Street, San Francisco, CA 94105; E-Mail: haubenstock.arthur@epa.gov; Tel: (415) 744–1355.

Dated: November 9, 1998.

Michael Feeley,

Acting Director, Superfund Division, Region IX.

[FR Doc. 98–31398 Filed 11–23–98; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

November 10, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated

collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 24, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0774.

Title: Federal-State Joint Board on Universal Service, CC Doc. No. 96–45 (47 C.F.R. §§ 36.611–36.612 and 47 C.F.R. Part 54).

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities; Individuals or households; Not-for-profit institutions; and State, Local or Tribal Government.

Number of Respondents: 5,565,451.

Estimated Time per Response: 5 mins. up to 100 hours (0.3 hours on avg.).

Frequency of Response: Recordkeeping; On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 1,785,570 hours.

Total Annual Cost: None.

Needs and Uses: Congress directed the Commission to implement a new set of universal service support mechanisms that are explicit and sufficient to advance the universal service principles enumerated in Section 254 of the Telecommunications Act of 1996 and such other principles as the Commission believes are necessary and appropriate for the protection of the public interest, convenience and necessity, and are consistent with the Act. In the Report and Order issued in CC Docket No. 96–45, the Commission adopts rules that are designed to implement the universal service provisions of Section 254. Specifically, the Order addresses: (1) Universal service principles; (2) services eligible for support; (3) affordability; (4) carriers eligible for universal service support; (5) support mechanisms for rural, insular, and high cost areas; (6) support for low-income consumers; (7) support for schools, libraries, and health care providers; (8) interstate subscriber line charge and common line cost recovery; and (9) administration of support mechanisms. The reporting and recordkeeping requirements contained in CC Docket No. 96–45 are designed to implement Section 254. The reporting and recordkeeping are necessary to ensure the integrity of the program. All the collections are necessary to implement the Congressional mandate for universal service. The reporting and recordkeeping requirements are necessary to verify that the carriers and other respondents are eligible to receive universal service support.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–31277 Filed 11–23–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Correction

In the **Federal Register** Notice published November 10, 1998 (63 FR 63054) the reference to Fola S. Jinaou, President is corrected to read:

''Fola S. Jinadu, President''

Dated: November 18, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–31320 Filed 11–23–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 98–20]

Refrigerated Container Carriers Pty. Limited; Possible Violations of Section 10(a)(1) of the Shipping Act of 1984

Order of Investigation and Hearing

Refrigerated Container Carriers Pty. Limited (''RCC'') is a tariffed and bonded non-vessel-operating common carrier (''NVOCC'') located at Ste. 77, 89–97 Jones Street, Ultimo, NSW 2007, Sydney, Australia. Since 1991, RCC has filed a NVOCC tariff with the Federal Maritime Commission (''Commission''). RCC's current tariff in the Commission's Automated Tariff Filing and Information System (''ATFI'') has been effective since May 27, 1994. (ATFI Tariff No. 010847–002) RCC also has a NVOCC bond of $50,000 issued by Washington International Insurance Company (Bond No. 894–0093) which has been effective since April 15, 1991. RCC's current resident agent for service of process in the United States is The Roanoke Agency, Inc.[1]

Between February 14, 1994 and September 11, 1996, RCC is believed to have entered into and participated in an arrangement which allowed RCC to obtain ocean transportation for property at less than the rates or charges that would be otherwise applicable for shipments between Australia/New Zealand and the United States. On February 14, 1994, RCC entered into an agreement with a common carrier, Ocean Management, Inc. (''OMI''), in which RCC obtained certain ocean transportation rates and other special transportation considerations from OMI for the transportation of RCC's cargo between the United States and Australia. The terms of this arrangement were not filed with the Commission. The agreement between OMI and RCC appears to have continued until the arrangement apparently was terminated by OMI on September 11, 1996. This arrangement appears to have given the NVOCC, RCC, ocean transportation rates which were less than the applicable tariff rates and may have provided RCC with various untariffed services and benefits for more than two years and involving hundreds of shipments.

Section 10(a)(1) of the Shipping Act of 1984 (''1984 Act''), 46 USC app. 1709(a)(1), prohibits any person from knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, false measurement, or by any other unjust or unfair device or means, obtaining or attempting to obtain ocean transportation for property at less than the rates or charges that would otherwise be applicable. RCC may have violated section 10(a)(1) of the 1984 Act by entering into and utilizing an off-tariff arrangement to obtain ocean transportation for RCC's property at less than the rates or charges that would otherwise be applicable.

Under section 13 of the 1984 Act, 46 USC app. 1712, a person is subject to a civil penalty of not more than $25,000 for each knowing and willful violation of the 1984 Act, and not more than $5,000 for each other type of violation.[2]

[1] Washington International Insurance Company with its apparent affiliate, The Roanoke Agency, Inc., is located at Suite 500, 300 Park Blvd., Itasca, IL 60143–2625.

[2] The $25,000 and $5,000 penalties, originally established in the 1984 Act, have been increased to $27,500 and $5,500, respectively, effective November 7, 1996. See *Inflation Adjustment of Civil Monetary Penalties*, 27 SRR 809 (1996), and 46 CFR Part 506. However, in accordance with 46 CFR 506.5, these increases apply only to violations which occur after November 6, 1996. Since the alleged violations appear to have occurred prior to November 6, 1996, these increases do not apply.

In addition, section 23 of the 1984 Act, 46 USC app. 1721, provides that a common carrier's tariff may be suspended for violations of section 10(a)(1) of the 1984 Act.

Now therefore, it is ordered, That pursuant to sections 10, 11, 13, 14 and 23 of the 1984 Act, 46 USC app. 1709, 1710, 1712, 1713 and 1721, an investigation is instituted to determine:

(1) whether Refrigerated Container Carriers Pty. Limited violated section 10(a)(1) of the 1984 Act between February 14, 1994 and September 11, 1996, by knowingly and willfully, directly or indirectly obtaining or attempting to obtain ocean transportation at less than the rates and charges otherwise applicable by means of an agreement whose terms were not filed in the applicable tariff(s) or essential terms publication(s) with the Commission;

(2) whether, in the event violations of section 10(a)(1) of the 1984 Act are found, civil penalties should be assessed against Refrigerated Container Carriers Pty. Limited, and if so, the amount of penalties to be assessed;

(3) whether, in the event violations of section 10(a)(1) of the 1984 Act are found, the tariff of Refrigerated Container Carriers Pty. Limited should be suspended or canceled; and

(4) whether, in the event violations are found, an appropriate cease and desist order should be issued against Refrigerated Container Carriers Pty. Limited.

It is further ordered, That a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Administrative Law Judge in compliance with Rule 61 of the Commission's Rules of Practice and procedure, 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Administrative Law Judge only after consideration has been given by the parties and the Presiding Administrative Law Judge to the use of alternative forms of dispute resolution, and upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, That Refrigerated Container Carriers Pty. Limited is designated as Respondent in this proceeding;

It is further ordered, That the Commission's Bureau of Enforcement is designated a party to this proceeding;

It is further ordered, That notice of this Order be published in the **Federal Register**, and a copy be served on parties of record;

It is further ordered, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It is further ordered, That all further notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record;

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, and shall be served on parties of record; and

It is further ordered, That in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, the initial decision of the Administrative Law Judge shall be issued by November 18, 1999 and the final decision of the Commission shall be issued by March 17, 2000.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–31281 Filed 11–23–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 63 FR 64510.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:00 a.m.—November 24, 1998.

CHANGE IN THE MEETING:

Addition to the CLOSED portion of the meeting.

Item 2—Report on Brazilian Maritime Policies Affecting U.S.-Brazil Trades.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 98–31561 Filed 11–20–98; 3:58 pm]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 18, 1998.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. F.N.B. Corporation, Hermitage, Pennsylvania; to acquire 100 percent of the voting shares of Guaranty Bank and Trust Company, Venice, Florida, and thereby indirectly acquire Southwest Interim Bank No. 5, National Association, Sarasota, Florida.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer

Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Hancock Park Acquisition, L.P., and Hancock Park Acquisition, L.L.P., both of Inverness, Illinois; to become a bank holding company by acquiring at least 16.83 percent of the voting shares of Bank of Coronado, Coronado, California.

Board of Governors of the Federal Reserve System, November 18, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–31355 Filed 11–23–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 8, 1998.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. VIB Corporation, El Centro, California; to acquire Bank of Stockdale, F.S.B., Bakersfield, California, and thereby engage in the operation of a savings association pursuant to § 225.28(b)(4)(ii) of Regulation Y. **Comments on this application must be received by December 18, 1998.**

2. Wells Fargo & Company, San Francisco, California; and Norwest Mortgage, Inc., and Norwest Ventures, LLC, both of Des Moines, Iowa; to engage, as a joint venture, through its subsidiary Mortgage Professionals of Tampa Bay, LLC, Tampa, Florida in Residential mortgage lending pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, November 18, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–31356 Filed 11–23–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, November 30, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals relating to the organizational governing structure for Federal Reserve employee benefit plans.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: November 20, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–31562 Filed 11–20–98; 3:59 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made a final finding of scientific misconduct in the following case:

Ms. Eileen Glennon, Harvard Medical School and Brigham and Women's Hospital: Based on a report submitted to the Office of Research Integrity (ORI) by the Harvard Medical School (HMS) on June 30, 1998, as well as additional information obtained by ORI during its oversight review, ORI found that Ms. Glennon, former research technician, Endocrine-Hypertension Division, Brigham and Women's Hospital (BWH), engaged in scientific misconduct arising out of certain biomedical research supported by a grant from the National Heart, Lung, and Blood Institute (NHLBI), National Institutes of Health (NIH), and a grant from the National Center for Research Resources (NCRR), NIH.

Specifically, Ms. Glennon fabricated data to plot standard curves while conducting radioimmunoassays to determine angiotensin II concentrations. When the assays appeared not to be working, which occurred in approximately half of the assays over a one year period, she used numbers from previous standard curves and then used the fabricated standard curve to determine the concentration of angiotensin II, thus producing false experimental results. Ms. Glennon cooperated fully with the institutional inquiry panel and admitted her acts.

Ms. Glennon has accepted the ORI finding and has entered into a Voluntary Exclusion Agreement with ORI in which she has voluntarily agreed, for the three (3) year period beginning November 13, 1998:

(1) To exclude herself from serving in any advisory capacity to the Public Health Service (PHS), including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant; and

(2) That any institution that submits an application for PHS support for a research project on which her participation is proposed or which uses her in any capacity on PHS supported research, or that submits a report of PHS-funded research in which she is involved, must concurrently submit a plan for supervision of her duties to the

funding agency for approval. The supervisory plan must be designed to ensure the scientific integrity of Ms. Glennon's research contribution. The institution also must submit a copy of the supervisory plan to ORI.

FOR FURTHER INFORMATION CONTACT: Acting Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Acting Director, Office of Research Integrity.

[FR Doc. 98–31352 Filed 11–23–98; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Solicitation of Public Comment on Proposed Collection of Fees at United States Ports Designated To Conduct Rodent Infestation Inspections and Issue Deratting and Deratting Exemption Certificates

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice for public comment.

SUMMARY: The CDC is soliciting comments on a process to begin charging fees for conducting rodent infestation inspection of ships, and issuing Deratting and Deratting Exemption Certificates. While the United States does not require these certificates for ships to enter its seaports, Article 17 of the International Health Regulations requires that the U.S. provide these services and 42 CFR 71.46 authorizes their performance by CDC through the Public Health Service (PHS).

DATES: Written comments must be received on or before December 24, 1998.

FOR FURTHER INFORMATION CONTACT: James E. Barrow, Chief, Program Operations Branch, Division of Quarantine, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), Mailstop E03, Atlanta, Georgia 30333, telephone (404) 639–8107, FAX (404) 639–2599, E-mail jeb1@cdc.gov.

Authority: 42 U.S.C. 264–271, 42 CFR 71.46, IHR Articles 17 and 53.

SUPPLEMENTARY INFORMATION:

Purpose and Background

The purpose of this announcement is to solicit comments on charging fees for rodent infestation inspections of ships, and issuance of Deratting and Deratting Exemption Certificates, where these services are provided directly by employees or vendors of the CDC.

CDC provides rodent infestation inspections for ships at eleven major ports upon request, and issues Deratting and Deratting Exemption Certificates. These ports include: Baltimore, MD; Honolulu, HI; Houston, TX; Jacksonville, FL; Los Angeles, CA; Miami, FL; New Orleans, LA; New York, NY; San Francisco, CA; Savannah, GA; and Seattle, WA. Article 17 of the International Health Regulations, published by the World Health Organization, Geneva, requires that each Health Administration provide these services, and Article 82 outlines the criteria for charging fees. 42 CFR 71.46 authorizes the performance of these services by PHS as carried out by CDC. While CDC has for many years provided these services at no cost to the owners or agents of ships requesting them, foreign countries generally pass these costs on to those who directly benefit from them. While the United States does not require these certificates for ships to enter its seaports, and in view of the ongoing fiscal constraints and efforts to contain the national deficit, the cost of providing these services will be passed along as a charge to those receiving the inspections and certificates.

Applicability

The fees will be applicable to all rodent infestation inspections conducted, and Deratting and Deratting Exemption Certificates issued by CDC or its vendors.

Proposed Fees

For ships receiving rodent infestation inspections and issued Deratting and Deratting Exemption Certificates, the costs are determined by taking into consideration salaries, benefits, vendor services, printing, supplies, and agency overhead. The charge for the first full year during which fees for rodent infestation inspections and issuance of Deratting and Deratting Exemption Certificates are assessed is expected to be $150.

Shipping companies will be provided by mail the fee amount and instructions for submitting fees. The fees will be due at the address specified in the bill, not later than 30 days following the inspection.

Dated: November 18, 1998.

Joseph R. Carter,

Acting Associate Director for Management and Operation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–31332 Filed 11–23–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: National Survey of Child and Adolescent Well-Being (NSCAW).

OMB No.: New.

Description: Title V, Section 429A, in the amendments to Title IV–B of the Social Security Act authorizes the Secretary of Health and Human Services to conduct a national random sample study of child welfare. The NSCAW fulfills the intent of that legislation, and responds to a growing need for better understanding of the child welfare system and the children and families who come into contact with it. The survey will collect data through interviews and assessments with a national sample of 6700 children along with their parents, caregivers (such as foster parents), teachers, and caseworkers and other agency personnel to assess the characteristics of children and families who come into contact with the child welfare system, the services they need and receive, and the outcomes for those children and families. Information will be collected from all respondents at the time the child enters the child welfare system, with three subsequent annual follow-ups. In addition, some information will be collected from parents or caregivers and caseworkers midway between the annual collections. The information will provide national estimates on characteristics of children and families in the child welfare system, and will be used to guide child welfare policy and practice, as well as to provide new insights into the antecedents and consequences of child maltreatment.

Respondents: State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
NSCAW	19,339	2	.914	35,350

Estimated Total Annual Burden Hours: 35,350.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, *Attn:* ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: November 18, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–31280 Filed 11–23–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Land Acquisitions; Little River Band of Ottawa Indians of Michigan

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Final Agency Determination to take land into trust under 25 CFR Part 151.

SUMMARY: The Assistant Secretary—Indian Affairs made a final agency determination to acquire approximately 152.8 acres, more or less, of land into trust for the Little River Band of Ottawa Indians of Michigan on November 12, 1998. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

FOR FURTHER INFORMATION CONTACT: Nancy J. Pierskalla, Indian Gaming Management Staff Office, Bureau of Indian Affairs, MS 2070–MIB, 1849 C Street, NW, Washington, D.C. 20240, telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION: This notice is published to comply with the requirement of 25 CFR § 151.12(b) that notice be given to the public of the Secretary's decision to acquire land in trust at least 30 days prior to signatory acceptance of the land into trust. The purpose of the 30-day waiting period in 25 CFR § 151.12(b) is to afford interested parties the opportunity to seek judicial review of final administrative decisions to take land in trust for Indian tribes and individual Indians before transfer of title to the property occurs. On November 12, 1998, the Assistant Secretary—Indian Affairs decided to accept approximately 152.8 acres, more or less, of land into trust for the Little River Band of Ottawa Indians of Michigan pursuant to Section 1300k-4(b) and (d) of the Little Traverse Bay Bands of Odawa Indians and Little River Band of Ottawa Indians Act, Public Law 103–324, 25 U.S.C. §§ 1300k—1300k-7(1994). The Secretary shall acquire title in the name of the United States in trust for the Little River Band of Ottawa Indians of Michigan for the following parcel of land described below no sooner than 30 days after the date of this notice. A parcel of land containing 152.8 acres, more or less, situated near the City of Manistee, in Manistee County, Michigan, and is more particularly described as follows:

The NE¼, Section 28, Township 22 North, Range 16 West; excepting that part commencing at the Northeast corner of the SE¼ of the NE¼, West 264 feet, South 1 degree 40′ East 165 feet, East 264 feet, North 165 feet to the place of beginning. Also excepting the highway right-of-way for U.S. 31 in Liber 18, Page 180, and the highway right-of-way for M–22 in Liber 248, Page 18.

Subject to all easements, restrictions, covenants, reservations, responsibilities and requirements of record.

Subject to prior reservations of oil, gas, minerals, and related hydrocarbon interests, including the right to explore for, develop, and market the same; as recorded at Liber 310, Page 210; Liber 404, Page 46; Liber 404, Page 67, Liber 414, Page 796; Liber 414, Page 801; Liber 416, Page 460; Liber 425, Page 531; Liber 441, Page 923; Liber 473, Page 502; Liber 501, Page 94; all Manistee County Records.

Property I.D. #51–07–128–001–00

Dated: November 12, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–31406 Filed 11–23–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Amendment to Approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. § 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved Amendment II to the Tribal-State Compact for Regulation of Class III Gaming Between The Burns-Paiute Tribe and the State of Oregon, which was executed on September 4, 1998.

DATES: This action is effective November 24, 1998.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4066.

Dated: November 10, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–31405 Filed 11–23–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–034–08–1220–00: GPS–0027]

Temporary Closure of Public Lands: Oregon

AGENCY: Vale District, Bureau of Land Management, Interior Department.

ACTION: Notice of emergency closure of certain activities within Snively Hot Springs Recreation Site.

EFFECTIVE DATE: November 24, 1998.

SUMMARY: Effective November 24, 1998 all camping activities and the use of all open fire is prohibited at Snively Hot Springs Recreation Site. The site will remain open for day use activities, only. The closure is the minimum action determined needed to provide visitor safety, protection of the site's resource values, and to enhance recreational enjoyment. The site has been subject to an increased level and frequency of unlawful and inappropriate activities, including but not limited to disorderly conduct, assault, and the illegal use of alcohol and illicit drugs, unattended camp fires that have escaped resulting in destruction of riparian vegetation and scorched top soils; the destruction and vandalism of developed facilities and improvements; and extensive littering.

This closure order is authorized under Title 43 of the Code of Federal Regulations, subpart 8364.1. The following acts are prohibited throughout the year on all public lands within the Snively Hot Springs Recreation Site, located in Township 21 S., Range 45 E., section 22, Willamette Principal Meridian, Malheur County, Oregon.

1. The starting or maintaining of any open fire;

2. The use or occupancy of the recreation site daily from sunset to sunrise.

This closure order remains in affect until superseded by the Record of Decision for the Southeastern Oregon Resource Management Plan (SEORMP), which, in part, affects BLM management of the recreation site, or until other approved planning provides for defined public uses and restrictions within the recreation site.

PENALTY: Any person failing to comply with this closure order may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 U.S.C. 3571, or both.

FOR FURTHER INFORMATION CONTACT: Roy L. Masinton, Malheur Resource Area Manager, Bureau of Land Management, 100 Oregon Street, Vale, Oregon 97918, Telephone (541) 473–3144.

Roy L. Masinton,

Malheur Resource Area Manager.

[FR Doc. 98–31372 Filed 11–23–98; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–350–7123–00–6068]

Notice of Record of Decision: For Motor Vehicle Use and Road and Trail Designation for the Fort Sage Off-Highway Vehicle Area, Eagle Lake Field Office, Susanville, CA, and Lassen County

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice, record of decision for Off-Highway Motor Vehicle Designation of Roads and Trails within the Fort Sage Off-Highway Vehicle Area.

SUMMARY: Notice is hereby given that on November 18, 1998, John Bosworth, Acting Field Manager, Eagle Lake Field Office, issued a decision to designate all motorized vehicle routes within the Fort Sage Off Highway Vehicle (OHV) Area on public lands managed by the BLM in Lassen County, California. A motor vehicle designation of ''limited to designated roads and trails'' is established for this area. The affected public land includes all BLM managed lands within:

Mount Diablo Meridian

T. 26 N., R. 17 E.
T. 25 N., R. 17 E.
T. 25 N., R. 18 E.
T. 24 N., R. 18 E.

These route designations provide for the improved management and protection of public land resources, and people using the public lands, and will minimize conflicts among the various users of those lands.

In accordance with 43 CFR 8340, notice is hereby given that motorized off-highway vehicle use in the Fort Sage OHV Area administered by the Bureau of Land Management, is limited to designated roads and trails within the areas marked ''limited use area'' as shown on the map in Environmental Assessment CA–350–98–19.

In accordance with 43 CFR 8340, notice is hereby given that all roads that are not designated for use by official BLM signs will be closed unless otherwise marked. Exceptions to this rule will be emergency vehicles, fire suppression and rescue vehicles, BLM operation and maintenance vehicles, and other motorized vehicles on official business specifically approved by an authorized officer of the Bureau of Land Management.

SUPPLEMENTARY INFORMATION: These vehicle route designations are enforceable under the authority provided in the Federal Land Policy and Management Act (43 U.S. 1701 et seq.), Executive Order (EO) 11644 (Use of Off-Road Vehicles on Public Lands), and 3 CFR 74.332 as amended by EA 11989 (vol. 42, **Federal Register**, page 26959, May 25, 1977). Any person who violates or fails to comply with the vehicle route designations as governed by 43 CFR part 8341 is subject to arrest, conviction, and punishment pursuant to appropriate laws and regulations. Such punishment may be a fine of not more than $1,000 and/or imprisonment not to exceed more than 12 months. Maps showing the exact location of designated roads and trails are available at the Eagle Lake Field Office, 2950 Riverside Drive, Susanville, CA 96130.

FOR FURTHER INFORMATION CONTACT: John Bosworth, Acting Field Manager, Eagle Lake Field Office, Bureau of Land Management, 2950 Riverside Drive, Susanville, CA 96130 (916) 257–0456. For a period of 45 days from the date of publication of this notice, interested parties may submit written comments or objections to the Field Manager, Eagle Lake Field Office at the above address.

Dated: November 18, 1998.

John Bosworth,

Acting Area Manager.

[FR Doc. 98–31333 Filed 11–23–98; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–030–1430–01; WYW–0317557, WYW–42404]

Notice of Realty Action; Sale Under the Recreation & Public Purposes (R&PP) Act; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following public lands located adjacent to Curt Gowdy State Park, near Cheyenne, Wyoming, were classified as suitable for lease and sale under the provisions of the Recreation and Public Purposes Act as amended, 43 U.S.C. 869 *et seq.*, on April 26, 1962, for recreational purposes:

Sixth Principal Meridian

T. 14 N., R. 70 W.,
Sec. 8, SW¼, S½SE¼.

The land described above contains 240.00 acres.

FOR FURTHER INFORMATION CONTACT: Kurt J. Kotter, Field Manager, Rawlins Field Office, Bureau of Land Management, P.O. Box 2407, Rawlins, Wyoming 82301, (307) 328–4200.

SUPPLEMENTARY INFORMATION: Wyoming State Parks & Historic Sites (WSPHS), currently holds Recreation and Public Purpose leases on the above described lands. The Bureau of Land Management (BLM), proposes to convey these lands which are adjacent to Curt Gowdy State Park to WHPHS. Conveyance of these lands is consistent with the Great Divide Resource Management Plan and would serve important public objectives for outdoor education and recreation. The lands are not needed for Federal purposes.

The conveyance will contain reservations to the United States for:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official public land records at the time of patent issuance.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. A right-of-way for ditches and canals constructed by the authority of the United States.

Upon publication of this notice in the **Federal Register**, the land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

For a period of forty-five (45) days from the date of issuance of this notice, interested parties may submit comments to the Field Manager, Bureau of Land Management, Rawlins Field Office, P.O. Box 2407, Rawlins, Wyoming 82301. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify the realty action. In the absence of any objections, this proposed realty action will become final.

Dated: November 18, 1998.

Dennis J. Carpenter,

Acting Field Manager.

[FR Doc. 98–31388 Filed 11–23–98; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Control and Possession of the Tulsa District, United States Army Corps of Engineers, Tulsa, OK

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Tulsa District, United States Army Corps of Engineers, Tulsa, OK.

A detailed assessment of the human remains was made by Tulsa District Corps professional staff in consultation with representatives of the Caddo Indian Tribe of Oklahoma.

In 1967, human remains representing one individual were excavated at site 41LR12, Pat Mayse Reservoir, Lamar County, TX during legally authorized excavations conducted by Southern Methodist University personel. These human remains are curated at Southern Methodist University. No known individual was identified**.** The 67 associated funerary objects include clay pipestem fragments, one pipe bowl, projectile points, stone tools, whetstones, hammer stones, ceramics, and ocher.

Based on cultural material present at site 41LR12, this individual has been determined to be Native American. Based on the associated funerary objects and other cultural material, site 41LR12 has been identified as a Late Prehistoric period occupation dating between 800—1500 A.D. Based on the cultural material, geographic location, dates of occupation, 18th and 19th century accounts of the aboriginal occupants of the area, and consultation with representative of the Caddo Indian Tribe, site 41LR12 has been affiliated with the Caddo Indian Tribe of Oklahoma.

In 1962, human remains representing a minimum of seven individuals were excavated at site 34CH40, Hugo Lake, Choctaw County, OK during legally authorized excavations conducted by University of Oklahoma personnel. No known individuals were identified. The 716 associated funerary objects include projectile points, other stone tools, ceramics, polished bone, pieces of baked clay, stone flakes, and hematite.

Based on the cultural material of site 34CH40 and manner of interments as described in site reports, these individuals have been determined to be Native American. The cultural material also indicates that site 34CH40 dates to 1500 B.C. to 800 A.D. Based on the cultural material, associated funerary objects, geographic location, dates of occupation, 18th and 19th century accounts of the aboriginal occupants of the area, and consultation with representative of the Caddo Indian Tribe, site 34CH40 has been affiliated with the Caddo Indian Tribe of Oklahoma.

In 1970, human remains representing a minimum of two individuals were excavated at site 34CH43, Hugo Lake, Choctaw County, OK during legally authorized excavations conducted by University of Oklahoma personnel. No known individuals were identified. The 251 associated funerary objects include projectile points, stone tools, ceramics, and ground stone.

Based on the cultural material of site 34CH43, these individuals have been determined to be Native American. The cultural material also indicates that site 34CH43 dates to between 1500 B.C. and 800 A.D. Based on ceramics, stone tools, bone tools, archeological site type, geographic location, dates of occupation, 18th and 19th century accounts of the aboriginal occupants of the area, and consultation with representative of the Caddo Indian Tribe, site 34CH43 has been affiliated with the Caddo Indian Tribe of Oklahoma.

In 1971, human remains representing a minimum of seven individuals were excavated at site 34CH53, Hugo Lake, Choctaw County, OK during legal excavations performed by University of Oklahoma personnel. No known individuals were identified. The 1,988 associated funerary objects include projectile points, stone tools, stone flakes, animal bone, shell, pottery sherds, baded clay, molded clay, clay beads, and clay pipe fragments.

Based on the cultural material of site 34CH53, these individuals have been identified as Native American. The cultural material also indicates that site 34CH53 dates to between 800 and 1000 A.D. Based on the associated funerary objects, type of archeological site, geographic location, dates of occupation, 18th and 19th century accounts of the aboriginal occupants of the area, and consultation with representative of the Caddo Indian Tribe, site 34CH53 has been affiliated with the Caddo Indian Tribe of Oklahoma.

In 1971, human remains representing a minimum of one individual were excavated at site 34CH89, Hugo Lake, Choctaw County, OK during legally authorized excavations conducted by University of Oklahoma personnel. No known individuals were identified. The 972 associated funerary objects include projectile points, stone tools, ground stone, and pottery sherds.

Based on the cultural material of site 34CH89, this individual has been determined to be Native American. The cultural material of site 34CH89 dates the site to between 1500 B.C. and 300 A.D. Based on the ceramics, stone tools, type of archeological site, geographic location, dates of occupation, 18th and 19th century accounts of the aboriginal occupants of the area, and consultation with representative of the Caddo Indian Tribe, site 34CH53 has been affiliated with the Caddo Indian Tribe of Oklahoma.

In 1969, human remains representing a minimum of 14 individuals were excavated at site 34CH112, Hugo Lake, Choctaw County, OK during excavations conducted by University of Oklahoma personnel. No known individuals were identified. The 357 associated funerary objects include whole ceramic vessels, sherds, projectile points, stone tools, stone flakes, stone cores, and celts.

Based on the cultural material of site 34CH112, these individuals have been determined to be Native American. The cultural material of site 34CH112 dates the site to between 1000 A.D. and 1300 A.D. Based on the ceramics, stone tools, type of archeological site, geographic location, dates of occupation, 18th and 19th century accounts of the aboriginal occupants of the area, and consultation with representative of the Caddo Indian Tribe, site 34CH112 has been affiliated with the Caddo Indian Tribe of Oklahoma.

In 1971, human remains representing a minimum of one individual were excavated at site 34CH113, Hugo Lake, Choctaw County, OK during legally authorized excavations conducted by University of Oklahoma personnel. No known individuals were identified. The 174 associated funerary objects include whole ceramic vessels, sherds, baked clay, stone tools, stone flakes, animal bone, and a piece of ground stone.

Based on the cultural material of site 34CH113, this individual has been determined to be Native American. The cultural material of site 34CH113 dates the site to between 1000 A.D. to 1300 A.D. Based on the ceramics, stone tools, type of archeological site, geographic location, dates of occupation, 18th and 19th century accounts of the aboriginal occupants of the area, and consultation with representative of the Caddo Indian Tribe, site 34CH113 has been affiliated with the Caddo Indian Tribe of Oklahoma.

Based on the above mentioned information, officials of the U.S. Army Corps of Engineers, Tulsa District have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of at least 33 individuals of Native American ancestry. Officials of the U.S. Army Corps of Engineers, Tulsa District have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 4,795 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the U.S. Army Corps of Engineers, Tulsa District have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Caddo Indian Tribe of Oklahoma.

This notice has been sent to officials of the Wichita and Affiliated Tribes, the Tonkawa Tribe of Indians of Oklahoma, the Apache Tribe of Oklahoma, the Comanche Indian Tribe, the Kiowa Indian Tribe of Oklahoama, the Quapaw Tribe of Oklahoma, the Osage Nation of Oklahoma, and the Caddo Indian Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Mr. Robert W. Jobson, NAGPRA Coordinator, Planning Division, U.S. Army Corps of Engineers, Tulsa District, P.O. Box 61, Tulsa, OK 74121–0061, telephone (918) 669–7193, before December 24, 1998. Repatriation of the human remains and associated funerary objects to the Caddo Indian Tribe of Oklahoma may begin after that date if no additional claimants come forward.

Dated: November 17, 1998.

Veletta Canouts,

Acting Departmental Consulting Archeologist,

Deputy Manager, Archeology and Ethnography Program.

[FR Doc. 98–31350 Filed 11–23–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF LABOR

Office of the Secretary

Notice of Open Meeting of the Presidential Task Force on Employment of Adults with Disabilities

Background and Authority

The President Task Force on Employment of Adults with Disabilities (PTFEAD) was established under Executive Order No. 13078, signed March 13, 1998. Its primary purpose is to create a ''coordinated and aggressive national policy'' in order to increase the employment of adults with disabilities to a rate and level that mirror, as close as possible, that of the general adult population.

Task Force membership is also set forth in the Executive Order and includes the Secretary of Labor, Chair of the President's Committee on Employment of Adults with Disabilities, Secretary of Education, Secretary of Veterans Affairs, Secretary of Health and Human Services, Commissioner of Social Security, Secretary of the Treasury, Secretary of Commerce, Secretary of Transportation, Director of the Office of Personnel Management, Administrator of the Small Business Administration, the Chair of the Equal Employment Opportunities Commission, and the Chairperson of the National Council on Disability.

The Task Force will terminate 30 days after submitting its final report, which is due July 26, 2002.

Notice of Meeting Including Specifications As To Time/Place

An open meeting of the Task Force will take place on Monday, December 14, 1998 from 9:00 a.m. to 2:00 p.m. in the Grand Ballroom of the International Trade Center, 1300 Pennsylvania Avenue, N.W., Washington, DC.

Agenda Items

The agenda will include the public presentation and full Task Force discussion of the *First Report to the President,* a report mandated by Executive Order 13078. Vice President Gore will also meet with and address the Task Force.

Discussion of the *First Report to the President* will begin with brief oral presentations of several panels of federal government officials. The panels will be comprised of the Chairs of six inter-agency work groups formed to address the first six specific mandates of Section 2 of the Executive Order. Their presentations will include the initial fact-finding and impact assessment of Task Force member departments and

agencies, in terms of their respective efforts to eliminate or significantly reduce employment-related barriers for working-age adults with disabilities.

The work group Chairs will also identify both short-term recommendations for improving federal disability employment policy, and longer-term policy recommendations and issues that will need to be addressed by the PTFEAD during the next three and half years.

Special Accommodations

Any individuals wishing to attend the Task Force meeting who need special accommodations should contact Ms. Lori Peterson at telephone number 202–219–6081, ext. 154 (or TTY number 202–219–0012) by Tuesday, December 8.

For further information, you may also contact Ms. Peterson, or Ms. Barbara Fried, Director of Operations, at 202–219–6081.

Signed at Washington, DC this 17th day of November, 1998.

Rebecca L. Ogle,

Executive Director, Presidential Task Force on Employment of Adults with Disabilities.

[FR Doc. 98–31402 Filed 11–23–98; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–98–35]

Construction Roofing Industry Partnership Pilot Program

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice; information collection requirements; opportunity for public comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and information collection burdens, is conducting a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on both current and proposed collections of information in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that reporting burden (time and financial resources) is minimized, collection materials are clearly understood, impact of collection requirements on respondents can be accurately assessed, and requested data can be provided in the desired format. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the collection of information (paperwork requirements) associated with the Agency's Construction Roofing Industry Partnership Pilot Program.

The Agency is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of OSHA's responsibilities, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (for example, permitting electronic submissions of responses)

DATES: Written Comments must be submitted on or before January 25, 1999.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket ICR–98–35, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–7894. Written comments limited to 10 pages or less may be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Mr. Laurence Davey, Directorate of Construction, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3621, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–2073. Copies of the information collection requests are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Mr. Davey at (202) 693–2073 or Barbara Bielaski at (202) 693–1954. For electronic copies of the information collection request, contact OSHA's Web Page on the Internet at http://www.osha-slc.gov (click on *Information Collection Requests*).

SUPPLEMENTARY INFORMATION:

Background

OSHA requires that most construction workers be protected from falls of 6 feet (1.8 m) or more through the use of various fall protection systems. The U.S. roofing industry has a relatively high rate of employee fatalities and injuries, notably involving falls. About 80 percent of roofing contractors perform only residential work, which often involves smaller jobs of short duration, making it difficult for OSHA and state agencies to inspect many of the jobs. Thus, it is important to foster compliance with the fall protection standards through outreach efforts, and reward voluntary compliance.

The pilot program began in 1996 in OSHA's Region V as a partnership with the National Roofing Contractors Association (NRCA), set up for roofing contractors with exemplary safety and health programs performing work in Ohio, Illinois, or Wisconsin (the states in that region under Federal OSHA jurisdiction). This program is an outreach effort, administered by NRCA, intended to foster protection for construction workers from hazards such as falls from roofs and burns from hot asphalt through increased awareness and prevention of hazards. The program provides incentives for roofing contractors recognized by the program, and helps them build on their collective experience.

The program has two information collection burdens:

(1) To be accepted in the program, contractors must submit an application to a program steering committee, which reviews the submission and evaluates the contractor through an office and jobsite visit. Participating contractors receive penalty reductions and focused inspections.

(2) The program's Stakeholder Steering Committee is required to write an annual report to OSHA evaluating the program.

Action

This notice requests public comment on OSHA's burden hour estimates prior to OSHA seeking Office of Management and Budget (OMB) approval of the information collection requirements involved in the pilot program.

Type of Review: New.

Agency: Occupational Safety and Health Administration, U.S. Department of Labor.

Title: Construction Roofing Industry Partnership Pilot Program.

Agency Number: Docket No. ICR–98–35.

Frequency: Once for applications process and then annually for Committee report.

Affected Public: Business or other For-profit.

Number of Respondents: 26 contractor; 2 committee members.

Estimated Time Per Respondent: contractor; 2 committee members.

Estimated Time Per Respondent: contractors: 24 hours to prepare and submit applications, including 8 hours for office and job-site visits; committee members: 8 hours for 2 members.

Total Burden Hours: 404 hours.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed this 17th day of November, 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 98–31403 Filed 11–23–98; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

The U.S. National Commission on Libraries and Information Science (NCLIS) Sunshine Act Meeting

Correction Notice

''**Federal Register**'' Citation of Previous Announcement: FR, 11/20/98, Volume 63, Number 224, Page 64528.

PREVIOUSLY ANNOUNCED LOCATION OF MEETING: December 3, 1998, Seattle Public Library.

CHANGE IN LOCATION: December 3, 1998, Washington Athletic Club, Heritage Room, 3rd floor, 1325 Sixth Avenue, Seattle, WA.

CONTACT PERSON FOR MORE INFORMATION: Barbara Whiteleather, NCLIS (202) 606–9200.

Dated: November 20, 1998.

Robert S. Willard,

NCLIS Executive Director.

[FR Doc. 98–31559 Filed 11–20–98; 3:57 pm]

BILLING CODE 7527–$$–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, December 1, 1998.

PLACE: NTSB Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

7093 Brief of Accident-BK–117–B2 helicopter crash, N909CP, New York City, April 15, 1997; and Safety Recommendation to the Federal Aviation Administration about Blind Rivets.

7092 Hazardous Materials Accident Summary Report-Failure of Tank Car TEAX 3417 and Subsequent release of Liquefied Petroleum Gas, Pasadena, Texas, November 22, 1997.

7091 Railroad Regional Briefs.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

FOR MORE INFORMATION CONTACT: Rhonda Underwood, (202) 314–6065.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 98–31560 Filed 11–20–98; 3:56 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–220]

Niagara Mohawk Power Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission or NRC) is considering issuance of an amendment to Facility Operating License No. DRP–63 issued to Niagara Mohawk Power Corporation (NMPC or the licensee) for operation of Nine Mile Point Nuclear Station, Unit 1 (NMP1), located in the town of Scriba, Oswego County, New York.

The proposed amendment would change Technical Specification (TS) 5.5, ''Storage of Unirradiated and Spent Fuel,'' for NMP1. The changes would reflect a planned modification to increase the number of fuel assemblies that can be stored in the spent fuel pool from 2776 to 4086. The changes would also delete an erroneous reference within TS 5.5 to 10 CFR 70.55 for calculational methods approved by the Commission involving special arrays.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of NMP1, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Analysis of issues concerning the expanded spent fuel pool storage capacity modification has considered the following potential scenarios:

1. A spent fuel assembly drop in the spent fuel pool.
2. Loss of spent fuel pool cooling flow.
3. A seismic event.
4. A cask drop in the spent fuel pool.
5. An accidental drop of a rack module during construction activity in the pool.

The probability that any of the first four scenarios in the above list can occur is not significantly increased by the proposed Technical Specification changes and the associated modification activities. Spent fuel pool activities such as fuel assembly movement as well as Spent Fuel Pool Cooling System operation will continue to be performed in accordance with approved plant procedures. A cask drop into the pool is considered an unlikely event based on the design/maintenance of the main hoist, the controlled cask movement path and the cask drop protection system (hydraulic guide cylinder). None of these features are affected by the proposed change. Concerning installation activities, whether conducted during power operation or shutdown, the reactor building crane will be utilized for handling all heavy loads (i.e., old and new racks) during the reracking operation. The main hoist is equipped with a redundant hoisting system which will prevent the dropping of heavy loads in the event that a cable or other critical part of the main hoist equipment should fail. Operability of the cranes will be checked and verified before the re-racking operation. All lift rigging and the refueling crane/hoist system will be inspected and all heavy load lifts will comply with NUREG–0612, ''Control of Heavy Loads at Nuclear Power Plants,'' per plant procedures. Accordingly, the probability of a heavy load drop will not significantly increase.

Therefore, the proposed modification and associated Technical Specification changes do not involve a significant increase in the probability of an accident previously evaluated.

UFSAR [Updated Final Safety Analysis Report] Section 15.c.3, ''Refueling Accident,'' discusses the accident in which a fuel bundle is accidently dropped onto the top of the core during refueling operations and the subsequent radiological effects. Fuel assembly density in the core is essentially equivalent to that of the assemblies stored in the replacement spent fuel racks. Accordingly, the consequence of a fuel assembly dropped on the core (as analyzed in UFSAR Section 15.c.3), is not significantly

increased. Also, analysis shows that such an accident will not distort the racks sufficiently to impair their functionality and the minimum subcriticality margin, k_{eff} [neutron multiplication factor] [less than or equal to] 0.95, will be maintained. Thus, the consequences of such an accident remain acceptable and are not greater than those of previously evaluated accidents.

The consequences of a loss of spent fuel pool cooling have been evaluated and found acceptable. In the unlikely event that all pooling cooling is lost, sufficient time is available for the operators to re-establish cooling before the onset of pool boiling. Also, the consequences of a design basis seismic event have been evaluated and found acceptable. The new and the existing racks have been analyzed in their new configuration and found safe and impact-free during seismic motion. The structural capability of the pool will not be exceeded under dead weight, thermal, and seismic loads and the reactor building and the crane structure will retain the necessary safety margins during a seismic event. Thus, the consequences of a seismic event are not significantly increased.

Movements of heavy loads over the pool will continue to comply with applicable guidelines (e.g., NUREG–0612) and procedures. As previously mentioned, no heavy loads (e.g., racks, casks) will be transported over any region of the spent fuel pool containing fuel. The consequences of an accidental drop of a rack module into the pool during reracking activities have been evaluated indicating that very limited damage to the liner could occur. Therefore, the consequences of a heavy load drop are not increased.

During rack removal and installation activities, interim configurations will exist (i.e., various combinations of old and new racks). These combinations have been evaluated and indicate that no thermal-hydraulic, criticality and structural concerns exist.

The last paragraph in Section 5.5 states that calculations for k_{eff} values have been based on methods approved by the NRC covering special arrays (10 CFR 70.55). 10 CFR 70.55, ''Inspections,'' discusses inspections of special nuclear material and the premises and facilities where special nuclear material is used; not methods used to determine k_{eff}. Therefore, this is an inaccurate reference. Also, although the NRC does review and approve our methods to determine k_{eff} (as part [of] the Technical Specification Amendment approval process) this information is not considered critical design feature information. Accordingly, it does not belong in Section 5.0, ''Design Features,'' of the Technical Specifications. Based on the above, deletion of this paragraph will not have any adverse affect on safety and will eliminate any potential confusion involving the reference to 10 CFR 70.55.

Therefore, the proposed changes do not significantly increase the consequences of any accident previously evaluated.

The operation of NMP1, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed modification activities and associated Technical Specification amendment does not introduce any new modes of plant operation or accident precursors which could initiate a new or different kind of accident, affect the operation or function of any equipment necessary for the safe operation or shutdown of the plant, or involve any changes to plant operating parameters. The only physical alterations of plant configuration will involve the removal of currently installed non-poison and Boraflex spent fuel racks and the installation of new high density Boral racks. Heavy load movements (i.e., the old and new racks, casks) will continue to be performed in accordance with NUREG–0612. Accordingly, a drop of heavy loads onto spent fuel during and following installation activities need not be considered. As previously discussed, installation of the new racks does not constitute a thermal-hydraulic, criticality or structural concern. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of NMP1, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The proposed modification activities and associated Technical Specification Amendment involves replacing the currently install non-poison flux trap and Boraflex storage racks with new high density Boral racks. The proposed Technical Specification changes will not reduce the equipment required by Technical Specifications, affect any Technical Specification system setpoints, or adversely affect the ability of plant equipment to respond to an accident.

The design and technical considerations applied to the reracking modification included addressing the following areas:

1. Nuclear criticality considerations.
2. Thermal-hydraulic considerations.
3. Mechanical, material and structural considerations.

Concerning criticality considerations, the replacement high density spent fuel storage racks are designed to assure that the neutron multiplication factor (k_{eff}) is equal to or less than 0.95 with the racks fully loaded with fuel of the highest anticipated reactivity and the pool flooded with unborated water at a temperature corresponding to the highest reactivity. The maximum calculated reactivity includes a margin for uncertainty in reactivity calculations and in mechanical tolerances, statistically combined, such that the true k_{eff} will be equal to or less than 0.95 with a 95% probability at a 95% confidence level. Reactivity effects of abnormal and accident conditions have also been evaluated to assure that under credible abnormal conditions, the reactivity will be less than the limiting design basis value. Accordingly, the proposed change does not involve a significant reduction in a margin of safety in that the existing racks maintain a k_{eff} of less than 0.95.

Amendment No. 54 to the NMP1 [Operating License which changed the] Technical Specifications, dated February 1, 1984, increased the spent fuel storage capacity to the current maximum of 2776 assemblies. In [its] Safety Evaluation, Section 2.4, ''Spent Fuel Pool Cooling Considerations,'' the NRC indicated acceptance of NMPC's thermal-hydraulic analysis based on: (1) with the maximum normal heat load assumed and one cooling train in operation, pool water is calculated to 125 degrees F which is below the 140 degrees F limit recommended in Standard Review Plan (SRP) Section 9.1.3; and (2) with the maximum abnormal heat load assumed and two cooling trains operating, the maximum pool temperature is calculated to be below 124 degrees which is below the boiling temperature limit set forth in SRP Section 9.1.3.

The SRP requires that with a maximum normal heat load and a single failure, pool temperatures should be kept below 140 degrees F and that with an abnormal heat load, pool temperatures should be kept below boiling. For the abnormal heat load case, consideration of a single failure is not required. The analysis provided in Section 5, Attachment C of this submittal [the licensee's May 15, 1998] indicates how the proposed change meets the requirements of the SRP and, accordingly, that no significant decrease in a margin of safety occurs.

In SRP 9.1.3, a normal spent fuel pool heat load is considered to be a core shuffle. NMPC has evaluated the core shuffle using the SRP guidance as Case 1, in previously referenced Section 5 of Attachment C. This evaluation indicates that a maximum pool temperature of 119 degrees F will be reached, thereby meeting the SRP maximum temperature requirement of 140 degrees F. Because a ''normal heat load'' now potentially involves a full core offload, NMPC has also reviewed this discharge scenario (Case 3, Section 5) as a normal case and therefore assumed a single failure. As delineated in Case 3, calculations will be performed to determine the days after reactor shutdown when all assemblies can be transferred to the pool, as a function of reactor building cooling water temperatures, such that a 140 degrees F bulk pool temperature will not be exceeded. Therefore, the SRP bulk pool temperature limit of 140 degrees F for a maximum normal heat load (both shuffle and full core offload) will not be exceeded.

The SRP also requires that for an abnormal maximum heat load (emergency condition), without a single failure, that pool temperatures should be maintained below boiling. Using the guidelines provided in the SRP, calculations were performed that found the maximum pool temperature to be 135 degrees F which is well below the SRP criteria (Case 2).

The mechanical, material, and structural design of the spent fuel racks is in accordance with applicable portions of NRC's position in ''OT Position for Review and Acceptance of Spent Fuel Storage and Handling Applications,'' dated April 14, 1978 (as modified January 18, 1979), as well as other applicable NRC guidance and industry codes. The primary safety function of the spent fuel racks is to maintain the fuel assemblies in a safe configuration through

normal and abnormal loading conditions. Abnormal loadings that have been evaluated with acceptable results include the effect of an earthquake and the impact due to the drop of a fuel assembly. The rack materials used are compatible with the fuel assemblies and the environment in the spent fuel pool. The structural design for the new racks provides tilting, deflection, and movement margins such that the racks do not impact each other or the spent fuel pool walls in the active fuel region during the postulated seismic events. Also, the spent fuel assemblies themselves remain intact and no criticality concerns exist. In addition, the structural adequacy of the spent fuel pool was demonstrated.

During rack removal and installation activities, interim configurations will exist (i.e., various combinations of old and new racks). These combinations have been evaluated and indicate that no thermal-hydraulic, criticality and structural concerns exist.

Therefore, the proposed change will not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based upon this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

By December 24, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in such proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126. If a request for a hearing and petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing and a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mr. Mark J. Wetterhahn, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502, attorney for the licensee.

Untimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(l)–(v) and 2.714(d).

Pursuant to the Commission's regulations, 10 CFR 2.1107, the Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to ''any matter which the Commission determines to be in controversy among the parties.''

The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules and the designation, following argument of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR Part 2, Subpart K, ''Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors'' (published at 50 FR 41662 dated October 15, 1985). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. The presiding officer must grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application must be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding timely requests oral argument, and if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, Subpart G apply.

For further details with respect to this action, see the application for amendment dated May 15, 1998, as supplemented September 25 and October 13, 1998, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 18th day of November 1998.

For the Nuclear Regulatory Commission.

Darl S. Hood,

Senior Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–31336 Filed 11–23–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No.: 40–8948]

Consideration of Amendment Request for Shieldalloy Metallurgical Corp.

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of consideration of amendment request for Shieldalloy Metallurgical Corporation's Cambridge, Ohio Site and an opportunity for a hearing.

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to Source Material License No. SMB–1507 to allow for the receipt and placement of off-site slag/soil from the temporary staging area onsite to an area abutting the West Slag Pile as described in the July 24, 1998, ''Environmental Report for the Proposed Action to Relocate Off-site Slag/Soil at the Shieldalloy Metallurgical Corporation Plant in Cambridge, Ohio,'' prepared for Cyprus Foote Mineral Company by Auxier & Associates, Inc. This license was issued to the Shieldalloy Metallurgical Corporation (Shieldalloy) for possession of radioactive slag from previous alloy production processes conducted at the Cambridge plant. NRC licenses the facility under 10 CFR part 40. The license authorizes Shieldalloy to possess source material generally contained in slag that is a byproduct of processing of ores into metal alloys. Based on production process information, some of the slag produced at the Cambridge plant contained low levels of naturally occurring radioactivity from the alloy feed materials.

Shieldalloy has been preparing to decommission the Cambridge plant and terminate its NRC license. To complete the decommissioning of the site, Shieldalloy has proposed to stabilize, cap, and grade the slag in preparation for onsite disposal. NRC is currently awaiting Shieldalloy's filing of its decommissioning plan before NRC can complete its evaluation of final disposal options for the onsite slag piles and the off-site slag/soil. Until this overall review process is completed, the proposed offsite slag/soil addition would be placed in a manner that ensures a separable and retrievable condition. The NRC issued a Draft Environmental Impact Statement in 1996 and will prepare a Final Environmental Impact Statement (FEIS) after the decommissioning plan has been submitted.

Prior to the issuance of the amendment, NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will relate to both safety and environmental aspects of this discrete amendment request. If the amendment is granted, the NRC will assure that it will not prejudice any of the alternatives to be considered regarding final disposal. When the NRC makes its final determination of the disposition of the on-site slag pile and the slag/soil from off-site areas, these findings will be documented in the FEIS.

NRC provides notice that this is a proceeding on an application for a license amendment falling within the scope of subpart L, ''Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings,'' of NRC's rules of practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to Secretary, U.S. Nuclear Regulatory Commission, One

White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 am and 4:15 pm Federal workdays; or

2. By mail or telegram addressed to Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

In addition to meeting other applicable requirements of part 2 of the NRC's regulations, a request for a hearing filed by a person other than the applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Shieldalloy Metallurgical Corporation, West Boulevard P.O. Box 768, Newfield, NJ 08344, Attention: Mr. James P. Valenti, and;

2. NRC staff, by delivery to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 am and 4:15 pm Federal workdays, or by mail, addressed to Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For further details with respect to this action, the application for amendment is available for inspection at NRC's Public Document Room, 2120 L Street NW., Washington, DC 20003–1527.

FOR FURTHER INFORMATION CONTACT: James E. Kennedy, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6668. Fax: (301) 415–5398.

Dated at Rockville, MD, this 17th day of November, 1998.

For the Nuclear Regulatory Commission.

John W. N. Hickey,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–31335 Filed 11–23–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of November 23, 30, December 7, and 14, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of November 23

Tuesday, November 24

10:30 a.m. Affirmation Session (Public Meeting) *

a: Final rule, Part 2, Subpart J, ''Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository''

b: International Uranium (USA) Corporation Commission Review of Presiding Officer's Memorandum and Order (Aug. 19, 1998) Dismissing Envirocare

c: Final Rule, Part 2, Subpart M; Public Notification, Availablity Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications

d: North Atlantic Energy Corporation (Seabrook Station Unit No. 1); Motion to Withdraw Applications and to terminate Proceedings

Week of November 30—Tentative

Monday, November 30

2:00 p.m. Meeting on DC Cook (Public Meeting) (Contact: John Stang, 301–415–1345)

3:30 p.m. Affirmation Session (Public Meeting) (if needed)

Week of December 7—Tentative

Tuesday, December 8

9:00 a.m. Briefing on EDO Program (Public Meeting) (Contact: Irene Little, 303–415–7380)

11:00 a.m. Affirmation Session (Public Meeting) (if needed)

Week of December 14—Tentative

Tuesday, December 15

11:30 a.m. Affirmation Session (Public Meeting) (if needed)

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at:
http://www.nrc.gov/SECY/smj/schedule.htm

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

* * * * *

Dated: November 20, 1998.

William M. Hill, Jr.,

Secretary, Tracking Officer, Office of the Secretary.

[FR Doc. 98–31530 Filed 11–20–98; 2:14 pm]

BILLING CODE 7590–01–M

* THE SCHEDULE FOR COMMISSION MEETINGS IS SUBJECT TO CHANGE ON SHORT NOTICE. TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 415–1292. CONTACT PERSON FOR MORE INFORMAITON: Bill Hill, (301) 415–1661.

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–213 (10 CFR 2.206); DD–98–12]

Connecticut Yankee Atomic Power Company (Haddam Neck); Director's Decision Under 10 CFR 2.206

I. Introduction

On March 13, 1998, Mr. Jonathan M. Block submitted a petition pursuant to Title 10 of the *Code of Federal Regulations* Section 2.206 (10 CFR 2.206) on behalf of the Citizens Awareness Network (Petitioner) requesting that NRC (1) take immediate action to suspend Connecticut Yankee Atomic Power Company's (CYAPCO's) license to operate the Haddam Neck reactor and (2) investigate CYAPCO's intention to use an air cooling method as a backup cooling method for spent fuel.

In support of his request, the Petitioner offers the following five bases: (1) CYAPCO has not resolved longstanding failures to exercise adequate radiological controls, (2) the nitrogen intrusion event of August 1996 demonstrates that CYAPCO is unable to

maintain operations in a shutdown condition, (3) CYAPCO's plan to use air cooling of the spent fuel pool (SFP) as a backup cooling method would constitute an unmonitored, unplanned release into the environment, (4) the proposal to use the air cooling method is a violation of CYAPCO's license, and (5) the proposal to use the air cooling method reveals CYAPCO's lack of comprehension of the defense-in-depth approach to safety systems.

II. Background

Connecticut Yankee Atomic Power Company is the holder of Facility Operating License No. DPR–61, which authorizes the licensee to possess the Haddam Neck Plant (HNP). The license states, among other things, that the facility is subject to all the rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect. The facility consists of a pressurized-water reactor located at the licensee's site in Middlesex County, Connecticut. On December 5, 1996, CYAPCO submitted written certifications of permanent cessation of operation and that all nuclear fuel had been permanently removed from the reactor vessel. The certifications were docketed on December 11, 1996, and therefore, in accordance with § 50.82(a)(2), the facility is permanently shut down and defueled and is no longer authorized to operate or place fuel in the reactor.

Additional background relevant to the five bases offered by the Petitioner to support its requests is outlined below.

The Petitioner's first basis regarding the adequacy of the Haddam Neck Plant's (HNP's) radiological controls program has been evaluated by the NRC. The Petitioner notes that (1) in November 1996, the licensee allowed two workers to become contaminated during an entry into the fuel transfer canal, (2) in February 1997, the licensee released contaminated equipment to an unlicensed facility, and (3) on numerous occasions during the operating phase of the HNP, the licensee released contaminated materials to unrestricted areas. The first two items noted were included in the basis for issuing a confirmatory action letter (CAL) to the licensee on March 4, 1997, which documented the licensee's commitments to improve its radiation controls program. Subsequently, on May 5, 1998, the NRC issued the results of an inspection of the changes to the licensee's radiation controls program and concluded that the licensee had met the commitments listed in the CAL. The third item noted was addressed by the NRC in the Haddam Neck Historical Review Team Report, dated March 1998. The report concluded, that based on dose assessments completed thus far, radiation exposure to members of the public from the release of contaminated materials to offsite locations did not exceed the regulatory limits of 10 CFR Part 20.

The Petitioner's second basis, that CYAPCO is unable to maintain operations in the shutdown condition, is based on an August 1996 event. At that time, the reactor was shut down with the head in place and contained a full core of fuel. However, operators allowed nitrogen to collect in the reactor vessel, displacing water contained in the top of the reactor vessel head. The NRC conducted an augmented inspection team (AIT) review of the event and concluded that the event, in combination with other events that took place at the same time, was safety significant. However, there were no actual public health and safety consequences. The AIT issued its report on October 30, 1996. A ''Notice of Violation and Proposed Imposition of Civil Penalties—$650,000'' was issued to the licensee by NRC on May 5, 1997, due, in part, to the nitrogen intrusion event.

The Petitioner's third, fourth, and fifth bases pertain to modifications to the HNP spent fuel cooling system. CYAPCO submitted its Post Shutdown Decommissioning Activities Report (PSDAR) on August 22, 1997. The licensee plans to keep its spent fuel in wet storage in the spent fuel pool (SFP) until it can be transferred to the Department of Energy (DOE). In the interim period, the spent fuel building and systems necessary to accomplish fuel cooling will remain on site, separate from the rest of the site's mechanical and electrical systems. This arrangement is referred to as the ''spent fuel pool island.'' On March 11, 1998, at a public meeting at the Haddam Neck site, the licensee reported on the status of establishing the SFP island, among other items. The licensee stated that two trains of water cooling will be installed to cool the SFP. Heat rejection will be changed from the existing service water system to two new spray coolers to be mounted on the roof of the spent fuel building. During the discussion, the licensee stated that a backup cooling method, created by opening the building's doors and roof hatch to establish natural circulation air flow through the building, could be used to cool the spent fuel in the event that all other cooling systems became unavailable. The licensee did not present an evaluation of the dose consequences of radiological releases through the roof hatch, if the air cooling method was actually used. However, the licensee had not used the air cooling method and considered it highly unlikely that conditions would arise that would require its use.

In order to respond to the petition, the NRC requested information from the licensee with respect to its plans to air cool the SFP if other cooling methods were unavailable. The licensee responded by letters dated June 29 and October 14, 1998.

III. Discussion of Petitioners' Requests

Each of the Petitioner's requests is discussed below. The five bases presented by the Petitioner are considered for each request, and determinations are made as to whether the bases support the request.

The Petitioner's first request is to immediately suspend CYAPCO's operating license.

The first basis presented by the Petitioner, that the licensee has not resolved failures to exercise adequate radiological controls, no longer pertains to the first request, since the licensee has implemented improvements, and the NRC has found them acceptable.

The second basis presented was the nitrogen intrusion event of August 1996. Although the NRC took enforcement action in response to the event, the basis no longer pertains to the first request since the reactor vessel has been permanently defueled and no reactor accident is, or ever will be, possible at HNP.

The third basis presented to support the request to suspend HNP's operating license is that air cooling the spent fuel through the spent fuel building roof hatch would constitute an unplanned, unmonitored release of radioactivity to the environment. The Commission's regulations require a licensee to monitor and control radioactive releases. The Commission places a licensee under the authority of the regulations by issuing a license with appropriate conditions. For example, the HNP operating license imposes the requirements of 10 CFR Part 20, ''Standards for Protection Against Radiation,'' and 10 CFR Part 50, ''Domestic Licensing of Production and Utilization Facilities,'' among others, on the licensee. 10 CFR Part 20 limits the radiation exposure a licensee may allow a person to receive and requires the licensee to demonstrate that it has controlled exposures to levels less than the limits. 10 CFR Part 50 governs the operation and decommissioning of a reactor facility, and, perhaps most significantly in view of the third basis presented, requires a licensee to limit

the release of radioactive materials in effluents to ''as low as reasonably achievable'' (ALARA). Suspending the HNP license would not relieve the licensee of its responsibility to adequately control the use of radioactive materials in its possession, but could impede the NRC's ability to enforce regulatory requirements. Since the license is a mechanism through which the NRC holds the licensee to its responsibility, the third basis presented does not support suspension of the license.

The fourth basis presented to support the request to suspend the license is that the licensee's proposal to air cool the SFP using a flow path through the spent fuel building doors and roof hatch constitutes a violation of the license conditions. However, the license does not prohibit making proposals for alternate methods of operation of a reactor facility. Since making a proposal to air cool the SFP does not violate the license, the fourth basis does not support suspension of the license.

The fifth basis presented to support the request to suspend the license is that the air cooling proposal reveals that CYAPCO does not understand the defense-in-depth approach to backing up safety systems. Defense-in-depth, as applied at the system level, can be achieved by providing redundant and diverse methods to accomplish a function. The licensee described the normal and alternate SFP cooling systems. The normal system consists of redundant components for the SFP cooling system, the intermediate cooling loop, and the roof-mounted spray coolers. These are closed loops and do not require outside water to remain in operation, except for makeup water to the sprayers in hot weather. The redundancy provided in the normal cooling system allows several configurations to remove SFP heat. In addition, the SFP cooling pumps are backed up by alternate pumps that can be used to circulate river water through the normal system heat exchangers, which provides a diverse heat sink for the normal system. The pumps may be powered from offsite or onsite electrical power sources, and there is an engine-powered pump available that does not require electrical power. Thus, there are redundant and diverse sources of power for pumping. In the event no heat exchange systems are available, makeup water could be added to the SFP, and the cooling could be accomplished through evaporation. The heat would then be removed by the building exhaust fan, which is the normal release path. As evidenced by the components and alternates listed above, redundant and diverse methods are available to provide defense-in-depth for the SFP cooling function. The air cooling method is not required. Thus, the fifth basis does not support the request to suspend the license.

For the reasons stated above, the Petitioner's request to suspend the licensee's operating license is denied.

The Petitioner's second request is to investigate CYAPCO's proposal to air cool the SFP by opening the spent fuel building's doors and roof hatch.

The first basis presented by the Petitioner, that the licensee has not resolved failures to exercise adequate radiological controls, no longer pertains to the second request, since the licensee has implemented improvements, and the NRC has found them acceptable.

The second basis presented was the nitrogen intrusion event of August 1996. Although the NRC took enforcement action in response to the event, the basis does not pertain to the second request since the reactor vessel has been permanently defueled and no reactor accident is, or ever will be, possible at HNP.

The third basis presented by the Petitioner to support the request to investigate the licensee's air cooling proposal is that the licensee's plan to air cool the SFP by opening the spent fuel building's doors and roof hatch would constitute an unplanned, unmonitored release into the environment. The third basis concerns actions that have not occurred, and that the licensee does not expect to take. However, because the licensee plans to use the air cooling method under certain circumstances, the NRC considers the Petitioner's basis to be sufficient to grant the second request. A review of the licensee's regulatory responsibilities is presented in Section IV below.

The fourth basis presented to support the request for an investigation is that the licensee's proposal to air cool the SFP using a flow path through the spent fuel building doors and roof hatch constitutes a violation of the license conditions. However, the license does not prohibit making proposals for alternate methods of operation of a reactor facility. Since making a proposal to air cool the SFP does not violate the license, the fourth basis does not support the request.

The fifth basis presented to support the request to investigate the licensee's proposal is that the air cooling proposal reveals that CYAPCO does not understand the defense-in-depth approach to backing up safety systems. As noted above, the system proposed by the licensee achieves defense-in-depth by installing redundant and diverse components, power supplies, and heat sinks. The air cooling method is not required for defense-in-depth. Thus, the fifth basis does not support the request.

The NRC has determined that the third basis presented by the Petitioner is sufficient to grant the Petitioner's request to investigate the licensee's proposal to air cool the SFP. The staff's evaluation of the licensee's proposal is presented in Section IV below.

IV. Review of the Licensee's Proposal

The NRC requested information from the licensee with respect to its plans to air cool the SFP if other cooling methods become unavailable. The licensee responded by letters dated June 29 and October 14, 1998. The NRC also reviewed the licensee's operating license, Updated Final Safety Analysis Report (UFSAR), and Offsite Dose Calculation Manual (ODCM).

By letter dated October 14, 1998, the licensee stated that the dose consequence to an offsite member of the public from an airborne release from the SFP if the doors and roof hatch were opened to cool the spent fuel would be 0.254 mrem. The dose was calculated assuming that the air cooling method would be in use for 2 weeks before returning to a water cooling method and closing the doors and roof hatch. The dose is within regulatory limits. The licensee stated that procedures are in place to monitor a radioactive release from the roof hatch.

The licensee's October 14 letter contained a commitment to develop procedural guidance regarding when to open and subsequently close the spent fuel building (SFB) doors and roof hatch, in the event air cooling becomes necessary. The procedure will also direct operators to request airborne radioactivity surveys when the SFB doors and roof hatch are opened.

The Facility Operating License limits gaseous effluents in accordance with Technical Specification (TS) 3/4.11.2. That TS also requires that if a dose rate exceeds the limit, the licensee must decrease the release rate within 15 minutes to comply with the limits.

The UFSAR, Section 9.1.3, describes the SFP cooling system. Under the provisions of 10 CFR 50.59, a change to a system described in the UFSAR requires the licensee to perform a safety evaluation and, if necessary, obtain NRC approval before implementing the change. Using the air cooling method would fall within the scope of 10 CFR 50.59. Therefore, when the licensee revises its procedure to permit use of the air cooling method, it must perform a safety evaluation.

The ODCM provides the parameters and methodology to be used to calculate offsite doses and effluent monitor setpoints. Each effluent pathway used by the licensee must be accounted for in the ODCM. The licensee has procedures to monitor and quantify airborne releases, although, at the time of this review, the ODCM did not contain parameters or a methodology for a release path from the SFB roof hatch. However, there is no requirement to develop that information until the release path is used.

In summary, a release from the SFB doors and roof hatch from air cooling the SFP is required to be within regulatory limits. Before the air cooling method could be used, the licensee would have to perform a safety evaluation in accordance with 10 CFR 50.59 and revise its ODCM. In the event that the SFB doors and roof hatch are actually used for cooling the SFP, the release path must be monitored and actions taken to meet regulatory limits. However, there is no requirement to revise the ODCM unless the licensee, in fact, uses the air cooling method.

V. Decision

For the reasons stated above, the petition is denied in part and granted in part. The request to suspend the operating license is denied. The request to investigate the licensee's proposal to air cool the SFP is granted. The investigation is presented as the review in Section IV above. The decision and the documents cited in the decision are available for public inspection in the Commission's Public Document Room, the Gelman Building, 2210 L Street NW., Washington, D.C., and at the Local Public Document Room for the Haddam Neck Plant at the Russell Library, 123 Broad Street, Middletown, Connecticut.

In accordance with 10 CFR 2.206(c), a copy of this decision will be filed with the Secretary of the Commission for the Commission's review. As provided for by this regulation, the decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 16th day of November 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–31337 Filed 11–23–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–213]

Connecticut Yankee Atomic Power Co. (Haddam Neck Plant); Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision concerning a petition dated March 13, 1998, filed by Mr. Jonathan M. Block, Esq., pursuant to Title 10 of the Code of Federal Regulations, § 2.206 (10 CFR 2.206) on behalf of the Citizens Awareness Network (Petitioner). The petition requests that NRC (1) take immediate action to suspend Connecticut Yankee Atomic Power Company's (CYAPCO's) license to operate the Haddam Neck reactor and (2) investigate CYAPCO's intention to use an air cooling method as a backup cooling method for spent fuel.

The Director, Office of Nuclear Reactor Regulation, has determined that the Petition should be denied in part and granted in part for the reasons stated in the ''Director's Decision Under 10 CFR 2.206'' (DD–98–12); the complete text that follows this notice is available for public inspection and copying in the Commission's Public Document Room, the Gelman Building, 2210 L Street NW., Washington, DC, and at the Local Public Document Room for the Haddam Neck Plant at the Russell Library, 123 Broad Street, Middletown, Connecticut.

A copy of this decision has been filed with the Secretary of the Commission for the Commission's review. As provided for by 10 CFR 2.206(c), the decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Rockville, MD, this 16th day of November, 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director Office of Nuclear Reactor Regulation.

[FR Doc. 98–31338 Filed 11–23–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40680; File No. SR–ODD–98–1]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval to Proposed Supplement to Options Disclosure Document Regarding Options on Exchange-Traded Fund Shares

November 13, 1998.

On November 13, 1998, The Options Clearing Corporation (''OCC'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Rule 9b–1 under the Securities Exchange Act of 1934 (''Act''),[1] five definitive copies of a Supplement to its options disclosure document (''ODD''), which describes, among other things, the risks and characteristics of trading in options on interests in unit investment trusts, investment companies, and similar entities holding portfolios of equity securities.[2]

The ODD currently contains general disclosures on the characteristics and risks of trading options on equity securities. The Commission has approved proposals by two options exchanges to list and trade options on interests in unit investment trusts, investment companies, and similar entities holding portfolios of equity securities.[3] The proposed Supplement to the ODD provides for disclosures to accommodate the introduction of these options. Pursuant to Rule 9b–1, the Supplement will have to be provided to investors in options on Exchange-Traded Fund Shares before their accounts are approved for trading options on these products.

The Commission has reviewed the ODD Supplement and finds that it complies with Rule 9b–1 under the Act.[4] The Supplement is intended to be read in conjunction with the ODD, which discusses the characteristics and risks of options generally. The Supplement provides additional information regarding options on interests in unit investment trusts, investment companies, and similar entities holding portfolios of equity

[1] 17 CFR 240.9b–1.

[2] *See* Letter from James C. Yong, First Vice President and General Counsel, OCC, to Sharon Lawson, Division of Market Regulation, Commission, dated November 12, 1998.

[3] *See* Securities Exchange Act Release Nos. 40157 (July 1, 1998) 63 FR 37426 (July 10, 1998) (order approving File No. SR–Amex–96–44); and 40166 (July 2, 1998) 63 FR 37430 (July 10, 1998) (order approving File No. SR–CBOE–97–03).

[4] 17 CFR 240.9b–1.

securities sufficient to further describe the special characteristics of these products.

Rule 9b–1 provides that an options market must file five preliminary copies of an amended ODD with the Commission at least 30 days prior to the date definitive copies of the ODD are furnished to customers, unless the Commission determines otherwise, having due regard for the adequacy of information disclosed and the protection of investors.[5] The Commission has reviewed the Supplement, and finds that it is consistent with the protection of investors and in the public interest to allow the distribution of the Supplement as of the date of this order.

It is therefore ordered, pursuant to Rule 9b–1 under the Act,[6] that the proposed Supplement regarding options on interests in unit investment trusts, investment companies, and similar entities holding portfolios of equity securities (SR–ODD–98–1) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–31353 Filed 11–23–98; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974; Computer Matching Program (SSA/Department of the Treasury, Bureau of the Public Debt (BPD))—Match Number 1038

AGENCY: Social Security Administration.

ACTION: Notice of computer matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a computer matching program that SSA plans to conduct with BPD.

DATES: SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform and Oversight of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 966–0869 or writing to the Associate Commissioner for Program Support, 4400 West High Rise Building, 6401 Security Boulevard, Baltimore, MD 21235. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program Support as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. (Pub. L.) 100–503) amended the Privacy Act (5 U.S.C. 552a) by establishing the conditions under which computer matching involving the Federal Government could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. Among other things, it requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the approval of the matching agreement by the Data Integrity Boards (DIB) of the participating Federal Agencies;

(3) Furnish detailed reports about matching programs to Congress and OMB;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that this computer matching program complies with the requirements of the Privacy Act, as amended.

Dated: November 12, 1998.

Kenneth S. Apfel,

Commissioner of Social Security.

Notice of Computer Matching Program, Social Security Administration (SSA) With the Department of the Treasury, Bureau of Public Debt (BPD)

A. Participating Agencies

SSA and BPD.

B. Purpose of the Matching Program

The purpose of this matching program is to establish conditions and procedures for BPD's disclosure of certain savings bond information useful to SSA in verifying eligibility and payment amounts of individuals under the supplemental security income (SSI) program. The SSI program was created under title XVI of the Social Security Act (the Act) to provide benefits under the rules of that title to individuals with income and resources below levels established by law and regulations.

C. Authority for Conducting the Matching Program

Sections 1631(e)(1)(B) and (f) of the Act (42 U.S.C. 1383(e)(1)(B) and (f)).

D. Categories of Records and Individuals Covered by the Match

SSA will provide BPD with a finder file, extracted from SSA's Supplemental Security Income Record System, containing Social Security numbers of individuals who have applied for or receive SSI payments. This information will be matched with BPD files in BPD's savings bond registration system of records (United States savings-type securities) and a reply file of matched records will be furnished to SSA. Upon receipt of BPD's reply file, SSA will match identifying information from the BPD file with SSA's records to determine preliminarily whether the data pertain to the relevant SSI applicant or recipient before beginning the process of verifying bond ownership and taking any necessary benefit actions.

E. Inclusive Dates of the Match

The matching program shall become effective upon signing of the agreement by both parties to the agreement and approval of the agreement by the Data Integrity Boards of the respective agencies, but no sooner than 40 days after notice of this matching program is sent to Congress and the Office of Management and Budget, or 30 days after publication of this notice in the **Federal Register**, whichever date is later.

The matching program will continue for 18 months from the effective date

[5] This provision is intended to permit the Commission either to accelerate or extend the time period in which definitive copies of a disclosure document may be distributed to the public.

[6] 17 CFR 240.9b–1.

[7] 17 CFR 200.30–3(a)(39).

and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 98–31279 Filed 11–23–98; 8:45 am]

BILLING CODE 4190–29–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–117]

Section 304 Determination: Intellectual Property Laws and Practices of the Government of Paraguay; Termination of Intellectual Property Review of Paraguay Under the Generalized System of Preferences (GSP)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of determination, termination and monitoring.

SUMMARY: Having concluded the investigation undertaken pursuant to section 302 of the Trade Act of 1974, as amended (''Trade Act''), the United States Trade Representative (USTR) has determined pursuant to section 304(a)(1)(A)(ii) that certain acts, policies and practices of the Government of Paraguay concerning the protection and enforcement of intellectual property rights are unreasonable and discriminatory and constitute a burden or restriction on United States commerce. On November 17, 1998, the United States and Paraguay signed a Memorandum of Understanding (MOU) in which the Government of Paraguay committed to take a number of near-term and longer-term actions to address the practices that were the subject of this investigation. In light of the foregoing, the USTR has determined: not to take further action at this time; to terminate the investigation; and to monitor Paraguay's implementation of the MOU. The GSP review of Paraguay's intellectual property practices has also been terminated.

EFFECTIVE DATE: November 17, 1998.

FOR FURTHER INFORMATION CONTACT: Claude Burcky, Director for Intellectual Property, (202) 395–6864; Kellie Meiman, Director for Mercosur and the Southern Cone, (202) 395–5190; or Geralyn S. Ritter, Assistant General Counsel, (202) 395–6800.

SUPPLEMENTARY INFORMATION: On January 16, 1998, the USTR identified Paraguay as a ''priority foreign country'' under the ''Special 301'' provisions of the Trade Act (19 U.S.C. 2242). In identifying Paraguay as a ''priority foreign country,'' the USTR noted deficiencies in Paraguay's acts, policies, and practices regarding intellectual property, including a lack of effective action to enforce intellectual property rights. The USTR also observed that the Government of Paraguay had failed to enact adequate and effective intellectual property legislation covering patents, copyrights and trademarks. As required under Section 302(b)(2)(A) of the Trade Act, (19 U.S.C. 2412(b)(2)(A)), the USTR initiated an investigation of these acts, policies and practices on February 17, 1998. On August 4, 1998, the USTR extended the investigation until November 17, 1998, in light of the complex and complicated issues involved, pursuant to section 304(a)(3)(B) of the Trade Act. On October 16, 1998, the USTR proposed to determine under section 304(a)(1)(A)(ii) that the Government of Paraguay's acts, policies and practices regarding intellectual property are unreasonable, discriminatory and burden or restrict U.S. commerce, and requested public comment on what action, if any, to take in response.

During bilateral negotiations held to resolve these issues, the Government of Paraguay indicated that it has undertaken and will undertake a number of actions to improve the protection of intellectual property rights in Paraguay. For example, since this investigation was initiated, Paraguay has passed new copyright and trademark laws, and has undertaken efforts to legalize government use of software. The Government of Paraguay also has made efforts to improve enforcement of intellectual property rights, including conducting a number of notable recent seizures of counterfeit and pirated products. Despite these efforts, however, piracy and counterfeiting of U.S. products continue to be serious problems in Paraguay.

On November 17, 1998, the United States and Paraguay signed an MOU that includes an Enforcement Action Plan to address the issues that were the subject of this investigation. The MOU contains specific near-term and longer-term obligations that, when fully implemented, will greatly strengthen Paraguayan intellectual property law and enforcement procedures. For example, Paraguay has committed to implement institutional reforms to strengthen enforcement at its borders and to pursue amendments that will facilitate effective prosecution of copyright piracy. Paraguay also has committed to take immediate action against known centers of piracy and counterfeiting, and to coordinate the anti-piracy efforts of its customs, police, prosecutorial and tax authorities. In addition, Paraguay has agreed to pursue reform of its patent law, and to ensure that its government ministries use only authorized software.

Section 304 Determination

The USTR determines pursuant to section 304(a)(1)(A)(ii) of the Trade Act that acts, policies, and practices of the Government of Paraguay with respect to the protection and enforcement of intellectual property rights are unreasonable and discriminatory and constitute a burden or restriction on U.S. commerce. In light of the MOU signed by the Government of Paraguay on November 17, 1998, the USTR has determined not to take further action at this time under section 301(b)(2) of the Trade Act and has terminated this investigation. Pursuant to section 306 of the Trade Act, the USTR will monitor Paraguay's implementation of the MOU and will determine what further action to take under section 301(a) of the Trade Act if Paraguay does not satisfactorily implement the MOU.

Termination of GSP Review

In 1996, a review of Paraguay's protection of intellectual property rights was initiated in response to a petition filed by Nintendo. In light of the above-referenced MOU and Paraguay's recent steps to improve intellectual property protection, the GSP review is terminated.

Joanna K. McIntosh,

Chairman, Section 301 Committee.

[FR Doc. 98–31313 Filed 11–23–98; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending November 13, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–98–4726
Date Filed: November 9, 1998
Parties: Members of the International Air Transport Association
Subject:
COMP Telex Passenger/Cargo Mail Vote 972
Zimbabwe Currency Conversion
r1–010x r2–010mm
Intended effective date: January 1, 1999.

Docket Number: OST–98–4727
Date Filed: November 9, 1998
Parties: Members of the International Air Transport Association

Subject:
PTC23 EUR–JK 0033 dated October 16, 1998
Europe-Japan/Korea Resolutions r1–46
PTC23 EUR–JK 0034 dated November 6, 1998—Minutes
PTC23 EUR–JK Fares 0013 dated October 20, 1998—Tables
Intended effective date: April 1, 1999.

Docket Number: OST–98–4728
Date Filed: November 9, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC123/PTC31 Mail Vote 971—Reso 010w
Withdraw Proposed Increase in Fares from Pakistan
Pending in Dockets OST–98–4649, 98–4638, 98–4712 & 98–4713
(IATA Memoranda PTC123 0049–0051 & PTC31 N/C 0072 0074)
Intended effective date: November 15, 1998.

Docket Number: OST–98–4729
Date Filed: November 9, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC23 AFR–TC3 0055 dated October 15, 1998
Mail Vote 967 (Africa-South Asian Subc.) r1–9
PTC 23 AFR–TC3 0056 dated October 15, 1998
Mail Vote 968 (Africa-Southeast Asia) r10–22
Intended effective date: April 1, 1999.

Docket Number: OST–98–4744
Date Filed: November 12, 1998
Parties: Members of the International Air Transport Association
Subject:
PSC/Reso/095 dated October 30, 1998 r1–9
Expedited Resos/RPs from the 20th PSC/19th Joint PSC
(Summary attached to cover pleading.)
Intended effective date: as early as January 1, 1999.

Docket Number: OST–98–4746
Date Filed: November 12, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC1 Telex Mail Vote 974
Brazil-Caribbean/Central America Excursion Fares
(Reso 072qq—involves San Juan)
Intended effective date: December 1, 1998.

Docket Number: OST–98–4747
Date Filed: November 12, 1998
Parties: Members of the International Air Transport Association
Subject:
CAC/Reso/191 dated October 30, 1998
Finally Adopted Cargo Agency Resolutions r1–6
CAC/Meet/130 dated October 30, 1998—Minutes
Intended effective date: as early as January 1, 1999.

Docket Number: OST–98–4754
Date Filed: November 13, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC2 EUR 0222 dated November 10, 1998
Expedited Within Europe Reso 002m
Intended effective date: December 1, 1998.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 98–31345 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending November 13, 1998

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–98–4757.
Date Filed: November 13, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: December 11, 1998.

Description: Application of Delta Air Lines, Inc. pursuant to 49 U.S.C. Sections 41102, 41108 and subpart Q, applies for a Certificate of Public Convenience and Necessity and allocation of seven (7) frequencies to engage in scheduled foreign air transportation of persons, property and mail between Atlanta, Georgia and Rome, Italy beginning April 1, 1999. Delta requests that this authority be granted for a term of at least five years. Delta further request route integration authority to permit Delta to combine services that will be operated pursuant to the grant of this application with all other Delta services authorized by existing certificates and exemptions granted by the Department, to the extent permitted by applicable international agreements.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 98–31346 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[OST–1997–3286]

Notice of the Secretary of Transportation's Determination and the Department's Next Steps on Marine Transportation Safety in Puget Sound-Area Waters

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: On April 28, 1996, the White House issued the Department of Transportation (DOT) Action Plan to Address Vessel and Environmental Safety on Puget Sound-Area Waters. One element of this Action Plan committed DOT to assess the marine safety system in Puget Sound-area waters to determine whether any hazard scenarios warrant consideration of additional casualty prevention or response measures. Secretary Rodney E. Slater signed this determination on November 17, 1998. The determination and DOT's related announcement of next steps regarding additional measures are printed in an appendix to this notice. Several of the measures discussed in the announcement on additional measures will be pursued in partnership with the State of Washington. A Memorandum of Understanding formalizing this partnership is under development. Pursuant to the announcement on additional measures, an Advance Notice of Proposed Rulemaking on ''Improvements to Marine Safety in Puget Sound-Area Waters'' appears in the ''Proposed Rules'' section of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Stephen M. Shaprio, Office of the Assistant Secretary for Transportation Policy, U.S. Department of Transportation (P–130), 400 7th Street S.W., Room 10309, Washington, DC 20590, telephone (202) 366–4866.

Issued in Washington, D.C., on November 17, 1998.

Eugene A. Conti, Jr.,

Assistant Secretary for Transportation Policy.

Appendix—Determination of the Safety of the Marine Transportation System for Puget Sound-Area Waters

On April 28, 1996, the White House issued the Department of Transportation (DOT) Action Plan to Address Vessel and Environmental Safety on Puget Sound-Area Waters. This Action Plan consists of three elements. The first element is to establish criteria for and facilitate the development of a private sector system to provide timely emergency response to vessels in distress in the Strait of Juan de Fuca and the waters near the Olympic Coast National Marine Sanctuary. The Coast Guard submitted reports to Congress in January and December of 1997 on the development of the voluntary International Tug of Opportunity System (ITOS) as required under the 1995 Alaska Power Administration Asset Sale and Termination Act (Public Law 104–58). As of October 1998, eighty-six U.S. and Canadian tugs operating in the region have been fitted with location transponders and are actively participating in ITOS.

The second element—the subject of this statement—is to determine the adequacy of all vessel safety and environmental protection measures in Puget Sound-area waters. In November 1996 letters to Senator Murray, Congressman Dicks, and Governor Lowry—and in a December 1997 **Federal Register** notice (62 FR 68348)—we interpreted this provision as requiring our review of the overall marine safety regime in Puget Sound-area waters to determine whether any hazard scenarios warrant consideration of additional casualty prevention or response measures. The third element of the Action Plan—additonal measures to address any such hazard scenarios cited—is addressed in an accompanying announcement.

During the last two and one half years, the Department of Transportation has worked to maintain a high degree of marine safety in Puget Sound-area waters. This effort has addressed concerns expressed by Senator Murray, other members of the Washington Congressional delegation, Governors Lowry and Locke, and many local interests. These concerns have focused on increasing the level of safety and environmental protection for the State's waterways.

During 1996, we worked closely with industry in its development of ITOS, which serves a valuable function in providing a means to identify tugs that may be available to assist a vessel in distress. During 1997, DOT's Volpe National Transportation Systems Center conducted a broad assessment of the relative probabilities and consequences of marine accidents in the region. A critical element of the Volpe Center's review was a panel of recognized safety and environmental protection experts who provided information and opinions on the current system.

In addition to ITOS, prevention elements of the current system that were identified in the course of the Volpe Center's review include the Vessel Traffic Service operated by the U.S. and Canadian Coast Guards, the Traffic Separation Scheme to facilitate movement of inbound and outbound vessels serving U.S. and Canadian ports, the ''Area To Be Avoided'' adjacent to the Olympic Coast National Marine Sanctuary, and escort requirements for certain tankers east of Port Angeles. Response elements of the current system that were identified include oil spill response plans for each vessel, area contingency plans, and response equipment provided by industry, the Coast Guard, and the State.

Based on the findings in the Volpe Center's report, I hereby determine that the many existing elements of the region's marine transportation system comprise a safe system. While there are always areas for improvement—and we should always be looking into means for improving safety—the Volpe report shows that the Puget Sound area has an excellent system now.

Many different types of casualty scenarios were evaluated in the course of the Volpe Center's review. Based on the findings in the Volpe Center's report—and upon consideration of input received through public workshops and a public meeting we held subsequent to the release of the Volpe Center's report—I hereby find that the potential for collisions, powered groundings, and drift groundings warrant consideration of specific additional measures to further mitigate their risks. Our next steps regarding such measures are addressed in an accompanying announcement.

Dated: November 17, 1998.

Rodney E. Slater,

Secretary of Transportation.

Announcement Regarding Additional Risk Mitigation Measures for Puget Sound-Area Waters

This document outlines the Department of Transportation's (DOT's) next steps in light of the Secretary's determination on the safety of the marine transportation system for Puget Sound-area waters.

While the Secretary determined that the elements of the system—which encompasses many missions performed by the United States Coast Guard—comprise a safe system, he also found that consideration of specific additional measures is warranted to further mitigate the risks of collisions, powered groundings, and drift groundings. Some additional measures can be implemented immediately, while others require more thorough evaluation prior to implementation.

The 1997 risk assessment of the area's marine transportation system—performed by DOT's Volpe National Transportation Systems Center in support of the Secretary's determination—found that the most promising area for risk reduction is to address the risk of collision in southwestern areas of Puget Sound from Admiralty Head to Tacoma, followed by the offshore area near the ''J'' buoy, and by the eastern end of the Strait of Juan de Fuca.

A promising measure to reduce the risk of collisions and powered groundings is improved waterway management—such as potential modifications to the Traffic Separation Scheme at the western approach to the Strait of Juan de Fuca. Such modifications could move traffic—and the point where traffic merges to enter the Strait—farther offshore from sensitive areas, such as the Olympic Coast National Marine Sanctuary. This might facilitate safer merge patterns and increase the distance a disabled vessel could drift from offshore traffic lanes before grounding. The Thirteenth Coast Guard District is starting a Port Access Study to pursue this measure in consultation with its Canadian counterparts as well as State and local stakeholders.

The Coast Guard's Port State Control program, which identifies and targets substandard foreign vessels, has provided a significant reduction of risk. The Coast Guard is pursuing further upgrades to the program, such as increased attention to English language proficiency and increased information sharing with Canada.

In addition to the Port State Control elements to ensure crew competency, there are several other human element measures that will be taken to reduce the risk of collisions and powered groundings by improving crew effectiveness and performance. These include fatigue prevention and improved communications. The Coast Guard Captain of the Port of Puget Sound is implementing these measures

with Canadian and Washington State counterparts through the enforcement of recent international treaties and through ongoing Coast Guard programs.

In addition to these activities addressing collisions and powered groundings, we are proceeding to more fully evaluate prospective measures to prevent a drift grounding in the event of a loss of steering or propulsion. The recently implemented International Tug of Opportunity System (ITOS) is an outstanding example of a voluntary private-sector initiative to ensure safe operations.

The Coast Guard's Report to Congress on ITOS has noted that a sufficient number of tugs may not be present in the western Strait of Juan de Fuca and in the offshore areas in the course of routine commercial service. In order to assess this potential deficiency, DOT and the State of Washington have agreed to evaluate the effectiveness of ITOS. In addition, we will jointly fund and manage an analysis of the costs and additional risk reduction benefits that would be afforded by tug escorts for commercial vessels or by stationing a rescue tug in the region. These evaluations will start this winter. We expect that they will be completed by the end of next summer. If the evaluations indicate that pursuit of these measures is warranted, we will proceed with regulatory action at that time.

Since any new tug escort or prepositioned rescue tug requirements would require regulatory action, the Coast Guard is issuing an Advance Notice of Proposed Rulemaking. It provides a more complete picture of implementation options that may be considered in a subsequent rulemaking, and solicits specific comments on and additions to these options.

In addition to incident prevention, the Volpe report also addressed means to better mitigate and respond to incidents should they occur. Three such measures will be further pursued. The first is to review boom prepositioning and boom deployment capabilities to protect shallow shoreline habitats. The second is to review the allocation of response assets and area contingency plans in light of information gained through development of the Volpe report. The third measure is to evaluate the need to preposition a response vessel at the western entrance to the Strait.

The first two measures will be pursued by the Captain of the Port of Puget Sound in consultation with the Area Committee established to coordinate response preparations under the Oil Pollution Act of 1990. Consideration of the last measure, a prepositioned oil spill response vessel, will be incorporated in the evaluation of a prepositioned rescue tug.

These next steps provide meaningful and reasonable actions to further improve the already high level of marine safety in this region. We look forward to building on the progress and partnerships that have developed to this point as our efforts proceed.

[FR Doc. 98–31513 Filed 11–23–98; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Antidrug and Alcohol Misuse Prevention Programs for Personnel Engaged in Specified Aviation Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA has determined that the minimum percentage rate for drug testing for the period January 1, 1999, through December 31, 1999, will remain at 25 percent of covered aviation employees for random drug testing and will remain at 10 percent of covered aviation employees for random alcohol testing.

FOR FURTHER INFORMATION CONTACT: Ms. Patrice M. Kelly, Office of Aviation Medicine, Drug Abatement Division, Implementation, Regulations and Policy Branch (AAM–810), Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–8976.

SUPPLEMENTARY INFORMATION:

Administrator's Determination of 1999 Random Drug and Alcohol Testing Rates

In final rules published in the **Federal Register** on February 15, and December 2, 1994 (59 FR 7380 and 62218, respectively), the FAA announced that it will set future minimum annual percentage rates for random alcohol and drug testing for aviation industry employers according to the results which the employers experience conducting random alcohol and drug testing during each calendar year. The rules set forth the formula for calculating an annual aviation industry ''violation rate'' for random alcohol testing and an annual aviation industry ''positive rate'' for random drug testing. The ''violation rate'' for random alcohol tests means the number of covered employees found during random tests given under 14 CFR part 121, appendix J to have an alcohol concentration of 0.04 or greater plus the number of employees who refused a random alcohol test, divided by the total reported number of employees given random alcohol tests plus the total reported number of employees who refused a random test. The ''positive rate'' means the number of positive results for random drug tests conducted under 14 CFR part 121, appendix I plus the number of refusals to take random drug tests, divided by the total number of random drug tests plus the number of refusals to take random drug tests. The violation rate and the positive rate are calculated using information required to be submitted to the FAA by specified aviation industry employers as part of an FAA Management Information System (MIS) and form the basis for maintaining or adjusting the minimum annual percentage rates for random alcohol and drug testing as indicated in the following paragraphs.

When the annual percentage rate for random alcohol testing is 25 percent or more, the FAA Administrator may lower the rate to 10 percent of data received under the MIS reporting requirements for two consecutive calendar years indicate that the violation rate is less than 0.5 percent.

When the minimum annual percentage rate for random alcohol testing is 50 percent, the FAA Administrator may lower the rate to 25 percent if data received under the MIS reporting requirements for two consecutive calendar years indicate that the violation rate is less than 1.0 percent but equal to or greater than 0.5 percent.

When the minimum annual percentage rate for random alcohol testing is 10 percent, and the data received under the MIS reporting requirements for that calendar year indicate that the violation rate is equal to or greater than 0.5 percent but less than 1.0 percent, the FAA Administrator must increase the minimum annual percentage rate for random alcohol testing to 25 percent.

When the minimum annual percentage rate for random alcohol testing is 25 percent or less, and the data received under the MIS reporting requirements for that calendar year indicate that the violation rate is equal to or greater than 1.0 percent, the FAA Administrator must increase the minimum annual percentage rate for random alcohol testing to 50 percent.

When the minimum annual percentage rate for random drug testing is 50 percent, the FAA Administrator may lower the rate to 25 percent if data received under the MIS reporting requirements for two consecutive

calendar years indicate that the positive rate is less than 1.0 percent.

When the minimum annual percentage rate for random drug testing is 25 percent, and the data received under the MIS reporting requirements for any calendar year indicate that the reported positive rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random drug testing to 50 percent.

There is a one-year lag in the adjustment in the minimum annual percentage rates for random drug and alcohol testing because MIS data for a given calendar year is not reported to the FAA until the following calendar year. For example, MIS data for 1997 is not reported to the FAA until March 15, 1998, and any rate adjustments resulting from the 1997 data are not effective until January 1, 1999, following publication by the FAA of a notice in the **Federal Register**.

The minimum annual percentage rate for random alcohol testing was 10 percent for calendar year 1998. In this notice, the FAA announces that it has determined that the violation rate for calendar year 1997 is less than one-half of one percent positive, at approximately 0.10 percent, and the minimum annual percentage rate for random alcohol testing for aviation industry employers for calendar year 1999 will remain at 10 percent.

The minimum annual percentage rate for random drug testing was 25 percent in calendar year 1998. The FAA is also announcing that it has determined that the positive rate for calendar year 1997 is less than one percent, at approximately 0.70 percent, and that the minimum annual percentage rate for random drug testing for aviation industry employers for calendar year 1999 will remain at 25 percent.

Dated: November 17, 1998.

Jon L. Jordan,

Federal Air Surgeon.

[FR Doc. 98–31376 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In October 1998, there were 10 applications approved. This notice also includes information on one application, approved in September 1998, inadvertently left off the September 1998 notice. Additionally, nine approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph (d) of § 158.29.

PFC Applications Approved

PUBLIC AGENCY: Lafayette Airport Commission, Lafayette, Louisiana.

APPLICATION NUMBER: 98–02–U–00–LFT.

APPLICATION TYPE: Use PFC revenue.

PFC LEVEL: $3.00.

TOTAL PFC REVENUE TO BE USED IN THIS DECISION: $150,000.

CHARGE EFFECTIVE DATE: September 1, 1995.

ESTIMATED CHARGE EXPIRATION DATE: September 1, 1998.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: No change from previous decision.

BRIEF DESCRIPTION OF PROJECT APPROVED FOR USE: Rehabilitate runway 11/29.

DECISION DATE: September 22, 1998.

FOR FURTHER INFORMATION CONTACT: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

PUBLIC AGENCY: Savannah Airport Commission, Savannah, Georgia.

APPLICATION NUMBER: 98–03–C–00–SAV.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $3.00.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $1,111,931.

EARLIEST CHARGE EFFECTIVE DATE: June 1, 2016.

ESTIMATED CHARGE EXPIRATION DATE: November 1, 2016.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: Air taxi/commercial operators.

DETERMINATION: Approved. Based on information in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Savannah International Airport.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AND USE: Extend taxiway E; Construct fire station; Reconstruct east end taxiway C; Runway 18/36 replace keel section; Extend taxiway A to runway 36; General aviation taxiway; PFC development, implementation, and administration.

DECISION DATE: October 2, 1998.

FOR FURTHER INFORMATION CONTACT: Daniel Gaetan, Atlanta Airports District Office, (404) 305–7146.

PUBLIC AGENCY: County of Victoria, Victoria, Texas.

APPLICATION NUMBER: 98–02–C–00–VCT.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $3.00.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $188,872.

EARLIEST CHARGE EFFECTIVE DATE: January 1, 1999.

ESTIMATED CHARGE EXPIRATION DATE: January 1, 2002.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: None.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AND USE: Airfield drainage improvements (phase 1) and upgrade airfield guidance sign system; Airport master plan; Drainage improvements (phase 2); Airport entrance road and terminal access road; Joint seal/pavement repair/mark runways 12L/30R and 17/35 and taxiways A, B, C, and F; Rehabilitate runway lighting runway 12L/35R and apron pavement repair.

DECISION DATE: October 2, 1998.

FOR FURTHER INFORMATION CONTACT: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

PUBLIC AGENCY: City of Chicago Department of Aviation, Chicago, Illinois.

APPLICATION NUMBER: 98–09–C–00–ORD.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $3.00.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $1,540,000.

EARLIEST CHARGE EFFECTIVE DATE: September 1, 2017.

ESTIMATED CHARGE EXPIRATION DATE: October 1, 2017.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: Air taxi operators.

DETERMINATION: Approved. Based on information in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Chicago O'Hare International Airport.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AND USE: Phase II airport master plan; Terminal apron expansion; Snow removal equipment.

DECISION DATE: October 7, 1998.

FOR FURTHER INFORMATION CONTACT: Philip M. Smithmeyer, Chicago Airports District Office, (847) 294–7335.

PUBLIC AGENCY: Monterey Peninsula Airport District, Monterey, California.

APPLICATION NUMBER: 96–03–U–00–MRY.

APPLICATION TYPE: Use PFC revenue.

PFC LEVEL: $3.00.

TOTAL PFC REVENUE TO BE USED IN THIS DECISION: $459,905.

CHARGE EFFECTIVE DATE: January 1, 1994.

ESTIMATED CHARGE EXPIRATION DATE: July 1, 2002.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: No change from previous decision.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR USE: Environmental assessment/environmental impact report for airport road extension; Airport road extension; Airport road realignment; Sky Park Way connection to Garden Road.

DECISION DATE: October 13, 1998.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, San Francisco Airports District Office, (650) 876–2806.

PUBLIC AGENCY: City of Colorado Springs, Colorado.

APPLICATION NUMBER: 98–05–C–00–COS.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $3.00.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $9,029,906.

EARLIEST CHARGE EFFECTIVE DATE: August 1, 2003.

ESTIMATED CHARGE EXPIRATION DATE: April 1, 2005.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: None.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AND USE: Glycol pretreatment, outfall system, and new glycol pond; Airport storm drainage improvements; Runway 17L/35R centerline and touchdown zone lighting; Install runway end identifier lights on runway 12/30; Snow removal equipment; Terminal canopy improvements; Construct taxiway B extension from taxiway B5 to taxiway E; Construct taxiway C north to taxiway D.

BRIEF DESCRIPTION OF PROJECT DISAPPROVED: Apron roadway, glycol tank, and ground equipment storage area.

DETERMINATION: Disapproved. This project does not meet Airport Improvement Program (AIP) eligibility requirements as identified in paragraphs 524 and 553(b)(2) of FAA Order 5100.38A, AIP Handbook (October 24, 1989). The FAA has determined that the proposed apron is not a public use apron and that the service road is not required for the operation and maintenance of the airport. Therefore, this project does not meet the requirements of § 158.15(b).

DECISION DATE: October 14, 1998.

FOR FURTHER INFORMATION CONTACT: Christopher Schaffer, Denver Airports District Office, (303) 342–1258.

PUBLIC AGENCY: Port of Walla Walla, Walla Walla, Washington.

APPLICATION NUMBER: 97–02–U–00–ALW.

APPLICATION TYPE: Use PFC revenue.

PFC LEVEL: $3.00.

TOTAL PFC REVENUE TO BE USED IN THIS DECISION: $1,187,280.

CHARGE EFFECTIVE DATE: November 1, 1993.

ESTIMATED CHARGE EXPIRATION DATE: November 1, 2014.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: None.

BRIEF DESCRIPTION OF PROJECT APPROVED FOR USE: Terminal facilities development.

DECISION DATE: October 15, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Vargas, Seattle Airports District Office, (425) 227–2660.

PUBLIC AGENCY: Huntsville-Madison County Airport Authority, Huntsville, Alabama.

APPLICATION NUMBER: 98–08–C–00–HSV.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $3.00.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $588,935.

EARLIEST CHARGE EFFECTIVE DATE: May 1, 2008.

ESTIMATED CHARGE EXPIRATION DATE: January 1, 2009.

CLASSES OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: (1) Air taxi/commercial operator, (2) certificated air carrier, and (3) certified route air carriers operating at Huntsville International Airport (HSV) and having fewer than 500 annual enplanements at HSV.

DETERMINATION: Approved. Based on information contained in the public agency's application, the FAA has determined that each proposed class accounts for less than 1 percent of the total annual enplanements at HSV.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AND USE: Security/access control system upgrade; Expand air cargo apron; Rotating beacon refurbishment; Airfield sweeper/vacuum; Aircraft rescue and firefighting (ARFF) building renovations; Rehabilitate and expand general aviation apron; Security vehicle; Pick-up for snow plow usage; Communications center relocation and upgrade study; Lanier property.

BRIEF DESCRIPTION OF PROJECT APPROVED IN PART FOR COLLECTION AND USE: Snow removal equipment.

DETERMINATION: Approved in part. The public agency has elected to acquire one tractor snow broom sweeper and one vacuum sweeper in lieu of two tractor snow broom sweepers to meet its snow removal and foreign object and debris removal requirements under part 139. Therefore, the second tractor snow broom sweeper is not eligible for AIP or PFC funding until the public agency can demonstrate that the airport qualifies for additional power broom sweeper equipment under Advisory Circular 150/5220–20.

BRIEF DESCRIPTION OF PROJECT DISAPPROVED: Western land acquisition.

DETERMINATION: Disapproved. On the basis of information contained in the PFC application, the FAA has determined that this land acquisition (requested as five separate projects) does not meet the objectives of § 158.15(a); namely that the proposed land acquisition does not preserve or enhance safety, security, or capacity of the national air transportation system, reduce noise or mitigate noise impacts resulting from aircraft operations at HSV, or furnish opportunities for enhanced competition between or among air carriers. In addition, the FAA has determined that the proposed land acquisition is not eligible under AIP criteria in accordance with paragraph 603(b) of FAA Order 5100.38A, AIP Handbook (October 24, 1989).

DECISION DATE: October 19, 1998.

FOR FURTHER INFORMATION CONTACT: Roderick T. Nicholson, Jackson Airports District Office, (601) 965–4628.

PUBLIC AGENCY: City of Des Moines, Iowa.

APPLICATION NUMBER: 98–03–C–00–DSM.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $3.00.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $7,399,744.

EARLIEST CHARGE EFFECTIVE DATE: December 1, 2001.

ESTIMATED CHARGE EXPIRATION DATE: January 1, 2005.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: Part 135 air taxi/commercial operators.

DETERMINATION: Approved. Based on information contained in the public

agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Des Moines International Airport.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AND USE: Terminal restroom renovation; Terminal passenger skywalk; Terminal passenger skywalk lobby; Terminal capacity enhancement—phase II (terminal passenger holdroom expansion); Terminal ticket counter reconfiguration and replacement.

DECISION DATE: October 26, 1998.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, Central Region Airports Division, (816) 426–4730.

PUBLIC AGENCY: Metropolitan Nashville Airport Authority, Nashville, Tennessee.

APPLICATION NUMBER: 98–05–C–00–BNA.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $3.00.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $1,655,000.

EARLIEST CHARGE EFFECTIVE DATE: May 1, 2001.

ESTIMATED CHARGE EXPIRATION DATE: July 1, 2001.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: Part 135 air taxi operators

DETERMINATION: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplancements at Nashville International Airport.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AND USE: ARFF facility expansion; Outbound baggage conveyor system; Moving sidewalk, Concourse A.

BRIEF DESCRIPTION OF PROJECT DISAPPROVED: Perimeter fence—phase II.

DETERMINATION: Disapproved. On the basis of the information contained in the public agency's application, the FAA has determined that this project does not meet the objectives of § 158.15(a). Furthermore, the FAA has concluded that this project is not adequately justified since there is currently no aeronautical use of the land to be fenced.

DECISION DATE: October 28, 1998.

FOR FURTHER INFORMATION CONTACT: Michael L. Thompson, Memphis Airports District Office, (901) 544–3495.

PUBLIC AGENCY: City of Philadelphia, Pennsylvania.

APPLICATION NUMBER: 98–07–I–00–PHL.

APPLICATION TYPE: Impose of PFC.

PFC LEVEL: $3.00.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $666,098,000.

EARLIEST CHARGE EFFECTIVE DATE: January 1, 1999.

ESTIMATED CHARGE EXPIRATION DATE: July 1, 2011.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: Air taxi/commercial operators filing FAA Form 1800–31.

DETERMINATION: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Philadelphia International Airport.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION ONLY: Terminal One building (new international terminal), including associated renovations; Terminal F building (new commuter terminal); Aircraft parking apron for Terminal One; Aircraft parking apron for Terminal F; Airport roadway modifications—phase II (revised); Acquisition of property—west side of Terminal One; Planning and design of new highway access ramps from I–95.

DECISION DATE: October 30, 1998.

FOR FURTHER INFORMATION CONTACT: Patrick Sullivan, Harrisburg Airports District Office, (717) 730–2832.

AMENDMENTS TO PFC APPROVALS

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amendment estimated charge exp. date
93–01–C–02–GUC, Gunnison, CO	09/24/98	$807,453	$909,962	04/01/99	12/01/99
92–01–C–04–MSO, Missoula, MT	09/25/98	2,905,937	3,125,404	01/01/99	05/01/99
97–06–I–01–BDL, Windsor Locks, CT	10/01/98	12,602,000	14,360,000	04/01/99	01/01/99
97–04–C–01–LAX, Los Angeles, CA	10/02/98	150,000,000	440,000,000	05/01/00	02/01/04
92–01–C–02–MGW, Morgantown, WV	10/07/98	59,509	63,034	01/01/94	01/01/94
94–02–C–04–MGW, Morgantown, WV	10/07/98	200,194	180,394	11/01/00	07/01/01
96–03–C–01–MGW, Morgantown, WV	10/07/98	18,450	18,450	07/01/01	07/01/01
94–02–C–05–MGW, Morgantown, WV	10/15/98	180,394	130,894	07/01/01	10/01/99
92–01–C–02–HLN, Helena, MT	10/29/98	962,829	1,877,003	09/01/99	09/01/04

Issued in Washington, DC. on November 18, 1998.

Eric Gabler,

Manager, Passenger Facility Charge Branch.

[FR Doc. 98–31375 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before December 24, 1998.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW. Washington, DC 20590.

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on November 19, 1998.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12164–N	RSPA–1998–4680	Rhodia Inc., Shelton, CT	49 CFR 174.67 (i) & (j) ...	To authorize rail cars to remain connected during unloading of Class 8 material without the physical presence of an unloader. (mode 2)
12166–N	RSPA–1998–4679	Dow Corning Corp., Midland, MI.	49 CFR 173.304(a), 178.337–11(a)(1)(i), 178.337–11(a)(2)(i), 178.337–8(a)(2) (ii) & (iii), 178.65.	To authorize the transportation in commerce of MC–331 cargo tanks equipped with alternative valves for use in transporting hydrogen chloride, Division 2.3. (mode 1).
12173–N	RSPA–1998–4718	ARCO Alaska, Inc., Anchorage, AK.	49 CFR 172.101(9A)	To authorize the transportation in commerce of nitrogen, refrigerated liquid, Division 2.2, in insulated bulk crogenic liquid tanks in quantities which exceed those authorized. (mode 4).
12177–N	RSPA–1998–4778	Just In Time Certified Packaging Inc., St. Louis, MO.	49 CFR Part 172, Subpart E&F.	To authorize the manufacture, marking and sale of a specially designed packaging for use in transporting various classes of hazardous materials without required labels and placards. (modes 1, 2, 3, 4)

[FR Doc. 98–31368 Filed 11–23–98; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before December 9, 1998.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW, Washington, DC.

Application	Docket	Applicant	Modification of exemption
10677–M	.....	Suunto USA, Carlsbad, CA (See Footnote 1)	10677
11769–M	.....	HCI USA Distribution Co., Inc., Irvine, CA (See Footnote 2)	11769
11859–M	RSPA–1997–2310	Carleton Technologies, Inc., Orchard Park, NY (See Footnote 3)	11859
12013–M	RSPA–1997–3249	HCI USA Distribution Companies Incorporated, Irvine, CA (See Footnote 4)	12013

(1) To modify the exemption to authorize the addition of a butane/propane ''puncture'' type cartridge for the transportation of Division 2.1 material.

(2) To modify the exemption to reduce the concentration level of potassium hydroxide solution and bisulfites aqueous solution n.o.s.; the addition of UN31HI of capacities not to exceed 550 gallons and UN31HA1 of capacities not to exceed 610 gallons.

(3) To modify the exemption to authorize changes to the testing procedures and an additional configuration of the glass bottle system consisting of two cylindrical/spherical halves fabricated from stainless steel for use in transporting Division 1.4S material.

(4) To modify the exemption to allow UN31HA1 of capacities not to exceed 610 gallons, UN31H1 of capacities not to exceed 500 gallons and UN31HH1 of capacities not to exceed 500 gallons.

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on November 18, 1998.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

[FR Doc. 98–31369 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–98–3638; Notice 2]

Pipeline Safety: Liquefied Natural Gas Facilities Petition for Waiver; Exxon Company, USA

On April 22, 1998, the Research and Special Programs Administration (RSPA) published a notice (63 FR 19999) of intention to grant a waiver from compliance with certain provisions of 49 CFR part 193 to Exxon Corporation for its proposed Liquefied Natural Gas (LNG) storage tanks at its existing LaBarge, Wyoming, gas processing operation. This document announces RSPA's withdrawal of the earlier notice on the ground that waiver is unnecessary because the facility is not under 49 CFR Part 193.

The La Barge, Wyoming operation includes two parallel nitrogen rejection units and a small liquefied natural gas (LNG) truck loading facility. Exxon proposes to install two 55,000 gallon LNG storage tanks. These tanks were designed, built, tested, and registered in accordance with the requirements of American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, section VIII, Division 1. Exxon requested a waiver from compliance with specific sections of part 193 pertaining to nondestructive test requirements for ASME built vessels and indicated that it would provide equivalent safety through compliance with the National Fire Protection Association (NFPA) Standard 59A.

RSPA previously told Exxon that if the LNG is produced at the gas processing operation ''in the course of natural gas treatment or hydrocarbon extraction'' but not placed in a storage tank prior to putting it into trucks, then 49 CFR 193.2001(b)(2) says the facility is not regulated under 49 CFR part 193. However, the addition of LNG storage tanks brings the facility under 49 CFR part 193.

After revisiting this issue, RSPA has reversed its earlier position. If an LNG production facility does not receive gas from a pipeline subject to 49 CFR part 192 and does not supply gas to such a pipeline, then 49 CFR part 193 is not applicable to that LNG facility. Thus, Exxon's proposed LNG storage/truck loading facility at LaBarge, Wyoming, will not be subject to 49 CFR Part 193. A waiver is not necessary.

Issued in Washington, D.C., on November 18, 1998.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 98–31347 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33671]

Dubois County Railroad Corporation—Lease and Operation Exemption—Indiana Railway Museum, Inc.

Dubois County Railroad Corporation (Dubois), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to lease and operate approximately 13.4 miles of rail line owned by the Indiana Railway Museum, Inc., as indicated by Dubois in its notice, from milepost 67.3 at Crystal Lake in Dubois County, IN, to milepost 79.0 at French Lick and to the end of the line at approximately milepost 1.7 at West Baden Springs in Orange County, IN. The parties have treated the track as a ''spur, industrial, team, switching or side track.'' However, the prospect for future operations is such that Dubois believes its operations over the entire line in the future should be properly characterized as common carrier operations over a rail line. *See Chicago Rail Link, L.L.C.—Lease and Operation Exemption—Union Pacific Railroad Company,* STB Finance Docket No. 33323 (STB served Dec. 31, 1997).

The earliest the transaction could be consummated was November 6, 1998, the effective date of the exemption (7 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33671, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Carl M. Miller, 618 Professional Park Drive, P.O. Box 332, New Haven, IN 46774.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: November 17, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–31238 Filed 11–23–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33682]

Union Pacific Railroad Company—Trackage Rights Exemption—Alameda Belt Line

Alameda Belt Line (ABL) has agreed to grant local trackage rights to Union Pacific Railroad Company (UP) over 1.80 miles of ABL's rail line between milepost 0.00 near Clement Avenue and milepost 1.80 near Sherman Street in the city of Alameda, Alameda County, CA. ABL is jointly owned by UP and The Burlington Northern and Santa Fe Railway Company (BNSF), and, after the trackage rights are effective, UP will handle rail cars as the operating agent for BNSF.

The transaction was scheduled to be consummated on or after November 13, 1998.

The purpose of the local trackage rights is to permit UP to directly serve customers on the line, which UP expects to result in an efficient and economical route for the shippers in the area.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or

misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33682, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Joseph D. Anthofer, General Attorney, 1416 Dodge Street #830, Omaha, NE 68179.

Board decisions and notices are available on our website at WWW.STB.DOT.GOV.''

Decided: November 17, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–31239 Filed 11–23–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–33: OTS No. 5458]

Security Savings Association of Hazleton, Hazleton, Pennsylvania; Approval of Conversion Application

Notice is hereby given that on November 12, 1998, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Security Savings Association of Hazleton, Hazleton, Pennsylvania, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: November 19, 1998.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 98–31408 Filed 11–23–98; 8:45 am]

BILLING CODE 6720–01–P

Federal Register

Tuesday
November 24, 1998

Part II

Department of Transportation

Federal Transit Administration
Federal Highway Administration

Request for Letters of Interest to Participate in an Operational Test of an Electronic Payment System for Transit Fare Collection and Other Applications; Notice

DEPARTMENT OF TRANSPORTATION

Request for Letters of Interest to Participate in an Operational Test of an Electronic Payment System for Transit Fare Collection and Other Applications

AGENCY(S): Federal Transit Administration (FTA) and Federal Highway Administration (FHWA).

ACTION: Notice.

SUMMARY: The U.S. Department of Transportation (USDOT) announces a Request for Letters of Interest from eligible applicants for an operational test of an electronic payment system for transit fare collection and other applications. The USDOT is interested in identifying and evaluating issues associated with the establishment of partnerships between public transit service providers and other entities in the development and use of multiple-application electronic payment systems. The Department is specifically interested in an operational test of a payment system that includes a variety of applications, with preferred emphasis on multiple transportation applications, government benefits applications, and retail applications. This Request for Letters of Interest will be followed by a Request for Proposals (RFP) at a later date. To assist potential respondents this notice contains proposed draft text of the RFP.

DATES: Letters of Interest shall be submitted by 4:00 P.M. EST on or before 60 days after the date of the **Federal Register** Notice.

RESPONSE FORMAT: Letters of Interest shall not exceed five (5) pages in length. A page is defined as one (1) side of an 8½ by 11-inch paper, line spacing no smaller than 1.5 with a type font any smaller than 12 pt. The first page of the Letter of Interest shall include the name, address, and telephone number of the individual to whom correspondence and questions may be directed. Within the Letter of Interest, the respondent is asked to provide a summary of a potential proposed operational test with goals and objectives consistent with proposed draft text of the RFP presented below. Respondents are also invited to include comments on the proposed draft text of the RFP below. These comments shall not exceed ten (10) pages in length and shall be submitted as an Appendix to the Letter of Interest.

ADDRESSES: Letters shall be submitted to Walter Kulyk, Director, Office of Mobility Innovation (TRI–10), Federal Transit Administration, 400 7th Street SW., Room 9402, Washington DC 20590 and shall reference Electronic Payment System Demonstration.

ELIGIBILITY: *It is important to note that only those agencies that submit Letters of Interest will be eligible to respond to the Request for Proposals.* The Request for Letters of Interest is extended to public agencies and organizations in the United States including public transportation agencies and operators, transportation authorities and commissions, metropolitan planning organizations, local Councils of Government, and State and local Departments of Transportation.

FOR FURTHER INFORMATION CONTACT: Sean Ricketson, Office of Mobility Innovation, (TRI–11), at (202) 366–6678.

SUPPLEMENTARY INFORMATION:

Proposed Draft Text of a Request for Proposals (RFP)

The remainder of this notice contains proposed draft text of the RFP to be made at a later date. Please note that though the text is draft, Section II, Vision, Goals and Objectives, is final and will not change. The remaining text is subject to change and revision. Respondents should use the draft text to guide their summary proposals to be included in their Letters of Interest. Respondents are also invited to comment on the text.

Contents

I. Background

Recent developments in card systems and card technology present a unique opportunity for public and private institutions to establish mutually beneficial partnerships in the development and management of electronic payment systems for transportation. Recent developments include stored-value card systems created by financial institutions, contactless smart card systems for public transportation, electronic toll collection systems on highways and card systems for human service agencies' program management and benefits delivery. Private industry and public agencies foresee substantial benefits in establishing partnerships to develop further capabilities in electronic fee collection, delivery of benefits payments, funds transfer and financial clearinghouse functions. However, a number of institutional issues continue to restrict the formation of these partnerships. Through the development of an operational test this project intends to be a step toward identifying and addressing the complex institutional issues surrounding electronic fare payment systems in transportation.

II. Vision, Goals, and Objective(s)

The vision this operational test supports is one of improved public transit customer service and improved operational efficiency for transit providers. While the goals and objectives described below are focused on technical and institutional outcomes, the success of the test will be dependent upon whether it makes a positive contribution to the enhancement of public transit customer service and operational efficiency. This focus must be maintained throughout the planning, development and execution of the project by the grantee.

The goal of the operational test is to provide solutions to transit operators and other transportation and government service providers exploring the potential of integrating transportation payment systems with other payment systems and other applications. Additionally the operational test is intended to offer insight to those in the card industry, financial services industry, and other industries interested in becoming involved or integrating their services with a transportation payment system.

The objective of the operational test is to evaluate one or more transportation payment applications, one of which must be transit fare collection, within a card system of more than one card issuer and more than one service provider, with a financial institution functioning as a clearinghouse.

Additional objectives, if feasible, are to evaluate the viability and benefits of integrating a transportation payment system with a government benefits program and/or commercial stored-value card system (e.g., retail, telephone, etc.).

III. Definitions

Card issuer—the entity (e.g. transit agency, bank or financial institution, university, human service agency) that provides the card media (and may be identified on the media) and reconciles with participating service providers based on the stored value they have received from users.

Service provider—an entity (e.g., transit agency, retail store, university, human service agency, telephone company) which provides a service or product in exchange for payment via the card system.

Financial institution—bank or financial service company.

Application—a use or purpose for the card and card system, such as fare collection, telephone, welfare benefits, or electronic cash.

Government benefits program—disbursement of benefits by local, State, or Federal government to eligible customers. Examples include food stamps, welfare programs, and Social Security.

Clearinghouse—an entity or organization responsible for collection, reconciliation and settlement of customers' transactions among the participants of the card system. Additional tasks may include managing support functions of the system. These functions can include card management, issuance, distribution, revenue management, customer service and marketing.

Stored value card—a card application where monetary value is stored on a card in an electronically readable form. Card reader devices deduct the appropriate amount from the card. Stored value cards can be implemented with a variety of technologies including chip cards and conventional magnetic stripe cards.

IV. Project Development

A. General

The operational test will need to achieve an optimal balance of meeting local needs while also providing a worthwhile national model of payment system coordination and partnerships for implementation in other locations.

B. Management Oversight

The operational test will be managed by the grantee and local partners in the project. Additional guidance will be provided by the FTA advisory committee composed of transit industry representatives that provides guidance on electronic fare payment activities. Any changes in project scope or direction will be made in consultation with this advisory committee. For this project, the committee may be augmented by experts from other industries as needed, such as financial institutions and human service agencies. Concurrently, this committee will direct a separately funded effort being conducted by USDOT to develop and document a set of guidelines for the integration of electronic fare payment with other payment systems. These guidelines will assist individuals and agencies with the integration of a transit multi-use card with electronic payment systems for other uses, such as benefits transfer, toll collection, security, parking, retail, financial services, telephones, identification and access control. The results of the operational test are intended to contribute to the advancement of the guidelines document. In turn, the development of the guidelines document is intended to assist the advisory committee, the grantee, and local partners with the implementation of the operational test.

V. Partnerships

The USDOT will generally work with the lead public agency (grantee) participating in the partnership (State, City, Regional Agency, depending on site) to ensure the needed support to achieve the objectives of the field operational test. The USDOT will verify that the needed institutional, partnership and funding arrangements are in place. All necessary partnership arrangements and institutional agreements to support the project need to be specifically documented.

VI. National ITS System Architecture

The National ITS System Architecture provides a common structure for the design of Intelligent Transportation Systems (ITS). The architecture defines the function that must be performed to implement a given user service, the physical entities or subsystems where these functions reside, the interfaces/information flows between the physical subsystems, and the communication requirements for the information flows. In addition, the architecture identifies and specifies the requirements for standards needed to support national and regional interoperability, as well as product standards needed to support economy of scale considerations in deployment.

Proposals shall provide a ''Statement of Intent'' to design a system that is consistent with SAE J1708T Bus Vehicle Area Network, the National ITS Architecture, including the Transit Communications Interface Profiles (TCIP) and national ITS standards, protocols, or standards requirements as these emerge from the National ITS Architecture Development Program. Information about SAE J1708T may be obtained from the Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, Pennsylvania, USA, 15096–0001; phone: 412–776–4841, fax: 412–776–5760, or through the Internet at *http://www.sae.org.* Information about TCIP can be obtained on the TCIP homepage at *http://www.tcip.org* or by contacting the Institute of Transportation Engineers 525 School St., S.W., Suite 410 Washington, DC 20024; phone: 202–554–8050. Copies of the Architecture Definition Documents, the draft Standards Requirements Document, and the Standards Development Program from the Architecture Development Program are available from ITS America, 400 Virginia Avenue, S.W., Suite 800, Washington, D.C. 20024, telephone 202–484–4847. Electronic copies are available on the ITS America Internet Homepage, *http://www.itsa.org.* These documents provide insight into the definition of the National ITS Architecture, and the emerging approaches being taken toward standardizing interfaces that would support the integration of transportation management components.

In developing plans for standards and architectural consistency, proposals should recognize the practical benefits of this requirement. The ability to integrate systems and exchange data among applications offers some of the strongest benefits of ITS. As an illustration of understanding of this point, plans should identify potential opportunities for integration and data sharing among fare payment and other systems and applications. Information about key indicators of the electronic payment component of the ITS metropolitan infrastructure and integration of it with other components can be found in, ''Measuring ITS Deployment and Integration: August 1998'' available through the Internet at URL Http://www.its.fhwa.dot.gov/cyberdocs/welcome.htm the report is document number 4372 in the Electronic Document Library maintained at this website.

VII. Project Evaluation Activities

A major goal of the FTA is to promote development of innovative applications of advanced technologies. In order for the FTA to be able to encourage the widespread adoption of technological innovations, the technologies tested, and the results obtained must be analyzed, documented and reported. Accordingly, evaluations are an integral part of each field operational test and are critical to the success of the National ITS Program.

This electronic payment system operational test will be evaluated by the Volpe National Transportation Systems Center (Volpe Center) and its contractors. They will develop an Evaluation Plan which will specify the data collection requirements which will enable an assessment of the

achievement of the goals and objectives of the National ITS Program applicable to this project as well as the goals and objectives of the implementing organizations. They will assemble all the data collected in accordance with the Evaluation Plan, analyze these data, and prepare the Evaluation Report.

Although the Evaluation Plan will detail the specifics of the evaluation, it is anticipated that it will include an assessment of the technological issues, operational issues, customer acceptance, system reliability, attitudes of implementing organizations, implementation and continuing operational costs, integration issues, and a variety of institutional issues including partnership arrangements, legal issues, clearinghouse operation, the reason for selecting the type of system (closed or open), and the success in obtaining multiple agency participants.

The operational test partners (all participating agencies and institutions) will be involved in all phases of the evaluation. They will be expected to provide the local goals and objectives, review and comment on the Evaluation Plan, collect the data specified in the Evaluation Plan (including any surveys that may be necessary), provide information on external factors that may affect the project's results, and review and comment on the Evaluation Report prepared by the Volpe Center.

VIII. Funding

Federal funds available for this operational test will initially be $1.3 million with an anticipated additional $1.0 million available within one year of the grant award. Federal funding shall not exceed 50% of total project costs.

Implementing organizations will be required to furnish the specified evaluation data and perform reviews of evaluation documents. No additional Federal funding will be provided for this effort. The evaluation activities conducted by the Volpe National Transportation Systems Center (Volpe Center) will be funded separately by the FTA.

The USDOT, the Comptroller General of the United States, and, if appropriate, individual States have the right to access all documents pertaining to the use of Federal ITS funds and non-Federal contributions. Non-Federal partners must submit sufficient documentation during final negotiations and on a regular basis during the life of the project to substantiate these costs. Such items as direct labor, fringe benefits, material costs, consultant costs, and subcontractor costs, and travel costs should be included in that documentation.

IX. Schedule

The project must remain operational for a period long enough to obtain valid evaluation data. The data collection period will be for a minimum of twelve (12) months from the time that the project is fully operational (i.e., all elements are working as intended). Upon the completion of data collection there shall be a six (6) month period of analysis and report coordination before a final evaluation report is submitted. The system shall remain operational throughout the evaluation process until the final report is received and accepted by the Department.

X. Proposals

The USDOT will select one (1) or multiple sites to evaluate the issues associated with the establishment of partnerships between public transit service providers and developers of stored value card systems, electronic payment systems and financial clearinghouses.

Applications should, where possible, focus on utilizing currently available card technology. The Department is specifically interested in an operational test that includes a variety of applications with the primary emphasis on multiple transportation applications, government benefit applications and retail applications.

Applications that offer the greatest potential for demonstrating and evaluating the benefits of using electronic fare payment in a multi-application transportation environment with a private partnership will be considered the most desirable.

Proposal Criteria

A proposal shall not exceed thirty (30) pages in length including title, index, tables, maps, appendices, abstracts, resumes and other supporting materials. A page is defined as one (1) side of an 8½ by 11-inch paper, line spacing no smaller than 1.5 with a type font any smaller than 12 pt. A proposals exceeding than thirty (30) pages is strongly discouraged. Ten (10) copies plus an unbound reproducible copy of the proposal shall be submitted. The cover sheet or front page of the proposal shall include the name, address and phone number of an individual to whom correspondence and questions about the application may be directed. Each proposal shall include a Technical Plan, Financial Plan, and a Management and Staffing Plan that describes how the proposed objectives will be met within the specified time frame and budget. These plans should be structured so that they contain the following information.

A. Technical Plan

General Requirements

1. General Description of the local transit market and other proposed card system markets. Information shall include transit ridership statistics, outline of current fare collection process and payment media as well as any multi-modal aspects of the transportation system. Additionally, potential public/private agency(s) involvement such as partnerships, merchants, retailers, etc. must be outlined.

2. Interagency, public/private cooperative arrangements currently in place or planned, which will participate in the operational test and evaluation effort.

Concept Overview

1. Define existing infrastructure and support systems in place, e.g., current fare collection system and cash handling procedures, as well as current systems of those additional applications being considered for integration.

2. Describe how the existing infrastructure will be expanded and used to support the proposed system.

3. Describe the proposed system and how it will be integrated with other applications and participating institutions.

4. Summarize the expectations of the proposed system (e.g. costs, benefits, risks, operations, maintenance issues, plans, and system support).

Technical Approach

The technical approach will be judged on its ability to incorporate the requirements of a multi-application card system within a transit fare system. Proposals will be evaluated on demonstrated capability to integrate the requested scope of services with the necessary public and private sector partners in the transit environment.

Within the technical approach the following areas need to be clearly addressed:

1. Describe the goals and objectives of the system. These should include descriptions of both improved customer service and improved operating efficiency.

2. Describe the system design concept outlining extent of system integration, type of proposed media, settlement processes, and partners.

3. Describe implementation of the system in probable phases with funding for each phase clearly specified.

4. Describe the technical approach by which the system design concept will be

refined, developed, and operationally tested.

5. Document the schedule of work, assumptions and technical uncertainties, and proposed specific approaches to resolve any uncertainties.

6. Show evidence that the project team has thought through the service delivery part of the project design addressing such issues as: who will use the new payment media; and what problems will it solve for the participating transportation providers? What will the benefits of the new system be and how will the project team market the system to the rider?

7. Describe the plan for concluding the operational test (Closure Plan), indicating whether hardware, software, and infrastructure will remain in revenue service, be sold, or returned to participating vendors, if applicable. Closure Plans may be contingent upon the results of the operational test, in which case more than one Closure Plan may be developed.

B. Management and Staffing Plan

Provide names and positions of all personnel related to managing the project. Identify key management/control responsibilities for system database and the overall system. Provide a timeline and define key milestones and deliverables for the project for each funding year. Provide estimated professional and technical staffing in staff-months and staff-hours. Demonstrate that the project manager is capable, available and able to commit to a level of involvement that ensures project success. Include biographical data on key management personnel.

C. Financial Plan

Provide a description of total project costs and sources of matching funds, if applicable.

Provide a system budget identifying costs for system design, development, implementation, project management, operations, maintenance and evaluation support.

The applicant's evaluation support costs shall include the following information:

Breakdown costs identifying them by one of the following: (1) Local; (2) State; (3) Private; (4) Federal ITS; (5) Other Federal-aid; (6) Other (describe). Note: Costs attributed to Federal dollars proposed to be received through award of this operational test are Federal ITS.

Provide cost estimates by phase by funding year as defined in the technical plan.

All financial commitments to the project from both public and private sectors shall be documented in signed MOU's and included in the proposal.

The proposal shall provide an in-depth description and assessment of the total cost of achieving the objectives of the Electronic Fare Payment System field operational test. The Financial Plan should describe a phased approach that delineates what will be accomplished with the project funding.

The proposal should provide a comprehensive, concise plan that ensures systems integration of the functions necessary to support an electronic payment system for fare collection. The plan shall include a discussion of the ways in which design, acquisition, construction, and other procurement activities will affect systems integration.

XI. Proposal Evaluation Criteria

The primary evaluation criterion for the proposal will be the degree to which the proposal demonstrates common use of a multi-use card payment system with a multi-modal approach. It is important to note that the proposal needs to demonstrate not only regional applicability but provides the baseline for a national model. The proposal should emphasize in detail the nature and arrangement of the proposed public-private partnerships. The proposal will also need to illustrate the potential benefits as well as the associated risks and costs to the transit agency(s). The demonstration test will provide an opportunity to document and collect data that will be shared with the industry. Additionally, the grantee will need to specify how the demonstration test can contribute to the continued development of the design guidelines document.

Significant consideration will be given to those projects with greater levels of private and local funding contributions.

Significant consideration will be given to those projects involving public agencies with previous work or experience developing and integrating electronic payment systems.

All applicants must submit an acceptable ''Technical Plan,'' ''Financial Plan,'' and ''Management and Staffing Plan,'' that provide sound evidence that the proposed partnership can successfully meet the above stated objectives.

Issued: November 18, 1998.

Edward L. Thomas,

Associate Administrator for Research, Demonstration and Innovation, Federal Transit Administration.

Dennis C. Judycki,

Associate Administrator for Safety and System Applications, Federal Highway Administration.

[FR Doc. 98–31266 Filed 11–23–98; 8:45 am]

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Federal Register

Tuesday
November 24, 1998

Part III

Department of Health and Human Services

Food and Drug Administration

FDA Plan for Statutory Compliance; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0339]

FDA Plan for Statutory Compliance

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled ''FDA Plan for Statutory Compliance'' (the plan). This document is the agency's response to section 406(b) of the Food and Drug Administration Modernization Act of 1997 (FDAMA), which requires the Secretary of the Department of Health and Human Services (the Secretary) to develop a plan bringing the agency into compliance with the requirements of the Federal Food, Drug, and Cosmetic Act (the act).

DATES: Written comments may be submitted at any time.

ADDRESSES: Submit written comments on the plan to Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit e-mail comments to ''FDADockets@bangate.fda.gov''. E-mail comments should be labeled as comments and identified with the docket number found in brackets in the heading of this document.

Submit written requests for single copies of the ''FDA Plan for Statutory Compliance'' to the Dockets Management Branch (address above). Enclose one self-addressed adhesive label to assist that office in processing your requests. Copies of this plan are available on the Internet at ''http://www.fda.gov/opacom/7modact''.

FOR FURTHER INFORMATION CONTACT: Steven H. Chasin, Office of Planning and Evaluation (HFP–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5207.

SUPPLEMENTARY INFORMATION:

I. Background

On November 21, 1997, the President signed FDAMA into law. Section 406(b) of FDAMA requires the Secretary, after consultation with appropriate scientific and academic experts, health care professionals, representatives of patient and consumer advocacy groups, and the regulated industry, to develop and publish a plan bringing the Secretary into compliance with each of the obligations of the Secretary under the act. The plan is to be reviewed biannually and revised as necessary, in consultation with the groups listed in the previous sentence. The plan must address the following six objectives: (1) Maximizing the availability and clarity of information about the process for review of applications and submissions made under the act; (2) maximizing the availability and clarity of information for consumers and patients concerning new products; (3) implementing inspection and postmarket monitoring provisions of the act; (4) ensuring access to the scientific and technical expertise needed by the Secretary to meet the obligations of the Secretary under the act; (5) establishing mechanisms, by July 1, 1999, for meeting the time periods specified in the act for the review of applications and submissions made under the act and submitted after November 21, 1997; and (6) eliminating backlogs in the review of applications and submissions described previously by January 1, 2000.

Over the past several months, the agency held a series of meetings with its stakeholders. The process of consulting with agency stakeholders began with a careful examination of FDA's stakeholders vis-a-vis the products regulated by the agency and the perceived interest of these groups in FDA's processes. A total of eight open public meetings were held where agency stakeholders had an opportunity to provide their perspectives on a variety of issues/questions. Six of the eight meetings were focused specifically on FDA's product centers; one briefing for health professionals provided an opportunity for health professionals to offer input to FDA under the broad guidance of section 406(b) of FDAMA; and an agency-wide meeting was held to capture the perspectives of those who could not attend previous meetings and to provide an opportunity to explore recurring themes from previously held meetings.

In addition to the open public meetings focused specifically on section 406(b) of FDAMA, agency staff used a variety of ongoing interactions with stakeholders as opportunities to talk about the stakeholder consultation process and to invite comments to the docket.

II. The Plan

The agency plan for statutory compliance has been developed in response to the requirements outlined in section 406(b) of FDAMA. The plan presents a blueprint for carrying out all of the agency's statutory obligations, including provisions of the act, as well as its other mandates.

The plan outlines FDA's strategic directions for the next 5 years and presents an operational plan for fiscal year 1999 and 2000. The plan is a dynamic document which will be modified as ongoing consultations with FDA stakeholders render new and more effective strategies.

The act itself builds upon a long history of recommendations from advisory committee members, industry representatives, and consumers to help the agency respond to new challenges while still fulfilling its mission and mandates. It was Congress' belief that FDA could address these challenges by re-engineering several of its regulatory processes to achieve greater efficiencies and by buttressing its considerable risk assessment and risk management expertise through productive, collaborative relationships with key external stakeholders.

III. Comments

Interested persons, may at any time, submit written comments to the Dockets Management Branch (address above) regarding this plan. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document.

Submit e-mail comments to ''FDADockets@bangate.fda.gov''. E-mail comments should be labeled as comments and identified with the docket number found in brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The text of the plan follows:

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Food and Drug Modernization Act of 1997—FDA Plan for Statutory Compliance

November 1998

Table of Contnets

Executive Summary: FDA Plan for Statutory Compliance

Purpose

The FDA Plan for Statutory compliance addresses requirements set forth in Section 406 of the Food and Drug Administration Modernization Act of 1997 (FDAMA). The Plan identifies those actions necessary to bridge the gap between what FDA is required to do by statute and what it is able to accomplish with current resources. FDAMA has presented FDA with an opportunity to close that gap by working in concert with its community of stakeholders to protect the health and well-being of the American public. This Plan is a positive first step. It outlines bold and innovative approaches to meet the increasingly complex public health challenges of the 21st century.

FDA, however, is unable to meet all of these challenges with its current level of resources. Innovation and creative collaboration with stakeholders will enhance this effort, but significant additional resources, as well as prioritization of FDA activities, are essential if FDA is to meet its statutory requirements on a sustained basis and to meet public expectations. The successful implementation of this Plan depends on commitment of resources by both FDA and its stakeholders.

Scope

The Plan specifically addresses each of the objectives stipulated by Congress in FDAMA Section 406(b). These objectives, when achieved, will result in the following outcomes: stakeholders who are well informed about and involved in the Agency's new products and regulatory processes; comprehensive monitoring of industry practices and product use; regulatory decisions that are supported by a sound science base; and on-time reviews of new products prior to market entry.

To accomplish these objectives the Plan outlines FDA's strategic directions over the next 5 years and specific performance goals for Fiscal Year (FY) 1999. The Plan was developed in close consultation with a wide range of stakeholders, including consumers and patients, industry, health professionals, and other public sector regulators. The end product represents the collective views of FDA's senior leaders and its community of stakeholders.

The Plan

FDA Challenges in Fulfilling Its Mission: FDA must address several key challenges now and in the future for the Agency to successfully meet its statutory requirements and to fulfill its health promotion and protection mission. These include: research and development-fueled pressures on regulatory responsibilities; greater product complexity driven by breakthroughs in technology; growth in recognized adverse effects associated with product use; unpredictable new health and safety threats; awareness of citizen-stakeholders and their more targeted needs; emerging regulatory challenges in the international arena; and increased volume and diversity of imports. The ability to formulate successful solutions to these challenges depends on innovative approaches used by FDA, creative collaboration with stakeholders, prioritization of FDA activities, and an adequate investment of resources to implement these approaches.

Stakeholder Views: FDA's senior leadership listened carefully to the viewpoints of its many stakeholders prior to the development of this Plan. These opinions were expressed during a series of public meetings held during the summer of 1998. Several productive suggestions surfaced from these discussions. Two general themes emerged:

(1) *Greater stakeholder involvement:* Stakeholders want to be ongoing contributors to FDA's future strategies. Effective collaboration can raise the likelihood that these strategies will be successful. Stakeholders also want to be well-informed about FDA's regulatory processes. Consumers and patients want clear information about new products, and they want to receive the information in a timely manner.

(2) *Balanced, risk-based FDA decisions:* Stakeholders agreed that FDA priorities should be risk-based, and also believe that the Agency should balance timely premarket review programs with the need for effective postmarket inspection and surveillance. They urged the Agency to continue to develop a strong scientific and analytical basis for regulatory decisions. Some urged FDA to rely more on third parties and others want more direct FDA regulation.

Current Innovations/Reinventions: While stakeholders have made useful suggestions for enhancing Agency programs, FDA had already begun steps to improve its approach to public health protection and is continuing this effort. This has been accomplished both through redesign of internal programs and via collaborative efforts with outside parties. New, critically important medicines are now reaching the market more rapidly as a result of more efficient Agency review processes and the automation of these processes. Since 1993, the medium approval time for new drugs has been substantially reduced, from 20 months to around 12 months in 1997. FDA is collaborating with its regulatory colleagues as well as the regulated industry to develop national systems of consumer protection. Two examples are cited: FDA is working closely with the U.S. Department of Agriculture, the Center for Disease Control and Prevention, and the states to develop a comprehensive network for ensuring safety of the American food supply. FDA is also coordinating with the international regulatory community and the U.S. Customs service to increase assurance that imports entering the country are safe.

Strategic Directions for the Future: FDA's senior leadership identified the following strategic directions in order to focus the Agency's energies on meeting the objectives set forth in the Plan:

- *Establish risk-based priorities*—Focus resources on those health and safety risks that most directly threaten the well-being of U.S. consumers.
- *Strengthen the scientific and analytical basis for regulatory decisions*—A strong science base must underpin each of the Agency's regulatory decisions.
- *Work more closely with external stakeholders*—Collaboration with stakeholders will result in more effective solutions to public health problems.
- *Continue to re-engineer FDA processes*—Re-engineering will result in regulatory simplification and more cost-effective ways to run FDA's internal processes.
- *Adopt a systems approach to Agency regulation*—Regulatory approaches in the future will look for total problem solutions, rather than piecemeal review and enforcement decisions.
- *Capitalize on information technology*—Information technology will help to improve both internal efficiency and communication with stakeholders.

The six strategic directions outlined above will guide FDA's efforts to meet the FDAMA objectives. Many factors over the next several years will have an impact on FDA's ability to meet these

objectives including the outcome of a risk-based priority system, the success of third parties in the regulatory process, improvements in technology and systems engineering, and the synergies created by greater collaboration with other federal agencies, as well as FDA's external stakeholders, new statutory mandates, and emerging public health responsibilities. Reinvention will enable FDA to make up some of the difference between current performance and FDAMA objectives. Additional resources will also be necessary over the next 5 years in order for the Agency to satisfy its statutory requirements and to meet public expectations.

The body of this Plan identifies the major areas where FDAMA calls for FDA to meet statutory requirements, such as premarket reviews, injury reporting, and product safety assurance. It also discusses areas where there are not statutory requirements, but where there is general agreement on what time frames for reviews and inspections are appropriate and what other work needs to be accomplished to meet FDAMA objectives. FDA would be hard pressed to meet all of the FDAMA objectives with current resources and operating procedures. For example, in FY 1999 the Agency estimates it can accomplish roughly one-half to three-quarters of its statutory inspectional workload with current funding (See FIGURE 3).

Plan Organization

Part One of the Plan, the strategic framework, provides the broad Agency-wide context of the Plan. This includes:

(1) development of a clear mission statement;
(2) assessment of challenges that FDA faces in fulfilling its mission;
(3) analysis to the gap between what is expected of FDA and its actual performance;
(4) consulting FDA's stakeholders on future directions; and
(5) a statement of Agency-wide objectives (Section 406(b)) and strategic directions to achieve the objectives.

Part Two of the Plan maps the specific plan for achieving each 406(b) objective, including strategies and performance goals that can be used to manage toward the objectives. In Part Two, the specific performance targets for FY 1999 are established based on the Agency's existing resources, reinventions, and collaborative arrangements. FY 2000 performance targets currently are being developed as part of the FY 2000 Budget process and are not included in the Plan.

Part One—Strategic Framework

Purpose

The FDA Plan for Statutory Compliance addresses requirements set forth in Section 406 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (see Appendix A). The Plan identifies those actions necessary to bridge the gap between what FDA is required to do by statute* and expected to do by the public—and what the Agency currently is able to accomplish with existing resources. A high-performing FDA working in concert with its stakeholders is absolutely crucial to promote and to protect the health and well-being of the American public. Given the myriad escalating technological, economic, and health risk challenges, this will not be an easy task for FDA. The passage of FDAMA presents FDA with an opportunity to demonstrate innovative and bold approaches in meeting these challenges for the 21st century. This Plan is one positive step toward moving FDA into conformance with the views of Congress and the Agency's stakeholders.

This document demonstrates that FDA already is making great progress in managing health risks—a job that is becoming more complex and often fraught with uncertainty and unpredictability. The Plan also highlights the fact that the Agency clearly is unable to meet all of the challenges it is expected to address with its curent level of resources. Innovation and creative collaboration with external stakeholders will certainly enhance the Agency's abilities to reduce health risks in the long run; but additional resources are essential to help FDA fulfill its statutory mandates.

[*Statutory requirements encompass all provisions of the Federal Food Drug and Cosmetic Act (FD&C Act) and its amendments, including FDAMA.]

Scope

The Plan specifically addresses the six objectives stipulated by Congress in FDAMA Section 406(b):

- Maximize the availability and clarity of information about the process for review of applications and submissions.
- Maximize the availability and clarity of information for consumers and patients concerning new products.
- Implement inspection and postmarket monitoring provisions of this Act.
- Ensure access to needed scientific and technical expertise.
- Establish mechanisms, by July 1, 1999, for meeting time periods for the review of all applications and submissions.
- Eliminate backlogs in the review of applications and submissions by January 1, 2000.

To achieve these objectives, the Plan identifies Agency-wide strategic directions for the next 5 years, and specific performance goals for Fiscal Year (FY) 1999. Thus, the total plan presents a picture of the Agency's long- and short-term future that will be reviewed and modified as part of ongoing discussions with FDA's stakeholders, with future Department of Health and Human Services (DHHS) leadership and other parts of the Administration, and with Congress.

The Mandated Strategic Framework

This Plan is one element of a total strategic framework mandated by FDAMA that enables FDA to address increasingly complex public health challenges. This framework, outlined in Section 903 of the Federal Food, Drug, and Cosmetic Act as amended by FDAMA (see Appendix A), contains the following key elements:

1. An augmented mission statement for FDA, which places new emphasis on more resource-intensive consultation and cooperation with stakeholders as a crucial ingredient in public health protection and promotion [Sec. 903(b)(4)].

2. A charge to the Secretary of Health and Human Services to foster collaboration among science-based agencies throughout the federal government. Such coordination is necessary to strengthen the science capabilities that underpin federal responsibilities to ensure a safe food supply and related to development, evaluation, and monitoring of new medical therapies [Sec. 903(c)].

3. Stipulation of general powers that are necessary for carrying out Agency responsibilities, including research and education [Sec. 903(d)].

4. A requirement that FDA develop, after consulting with stakeholders, a plan for bringing the Agency into compliance with each of the obligations under the Act (The FD&C Act), and revise that plan as appropriate with stakeholder input [Sec. 903(f)].

5. A provision for FDA to prepare and publish an annual report that compares planned versus actual performance [Sec. 903(g)].

These elements reflect certain broad themes. First, the Agency should devise and implement strategies in a more open, multi-organizational environment. Congress emphasized throughout FDAMA that consultation, collaboration, and synergy-building

with external organizations are paramount to FDA achieving its mission of protecting and promoting public health. Simply put, FDA cannot do the job alone.

Second, Section 903 provides FDA with a more systematic approach to strategic management. The essential elements are clearly articulated: a clear mission, consultation with stakeholders, a plan based on stakeholder input to carry out the intent of the mission, and provision for ongoing feedback, accountability, and adjustment to the plan. The Agency recognizes the importance of this plan for action accountability, as outlined in Section 406(b) of FDAMA, and in establishing an ongoing dialogue with stakeholders to continually improve strategies.

Third, Congress has recognized that an array of capabilities including public education and research [Section 903(d)(2)] are essential elements required to carry out its responsibilities under the Act. The six objectives outlined in FDAMA 406(b) also explicitly stipulate education and scientific expertise as being central to the Agency's modernization plan. Successful public health promotion and protection decisions depend upon a well-developed science infrastructure and an informed public. Without these two elements, desired health outcomes are not possible.

FDA's Strategic Management Approach

Figure 1 illustrates how FDA is integrating the mandates in Section 903 to form the components of an effective strategic management process. As the figure illustrates, effective implementation of the FDAMA plan depends upon several elements:

(1) development of a clear mission statement;

(2) assessment of challenges that FDA faces in fulfilling its mission;

(3) analysis of the gap between what is expected of FDA and its actual performance;

(4) consulting FDA's stakeholders on future directions;

(5) a statement of Agency-wide objectives [406(b)] and strategic directions to achieve the objectives;

(6) a specific plan for achieving each 406(b) objective, including strategies and performance goals that can be used to manage toward the objectives; and

(7) a budget that adequately funds the plan.

Part One of the Plan provides the broad Agency-wide context—steps 1 through 5 above. Part Two of the Plan maps the specific plan for achieving objectives. In Part Two, the specific performance targets for FY 1999 are established based on the Agency's existing resources, reinventions, and collaborative arrangements. FY 2000 performance targets currently are being developed as part of the FY 2000 Budget process and are not included in the Plan. Many factors influence FDA's choice of performance levels, including: extrapolations of past performance, anticipated workload, creative re-engineering to improve internal efficiencies, successful collaboration with FDA's outside stakeholders, and strategic priorities.

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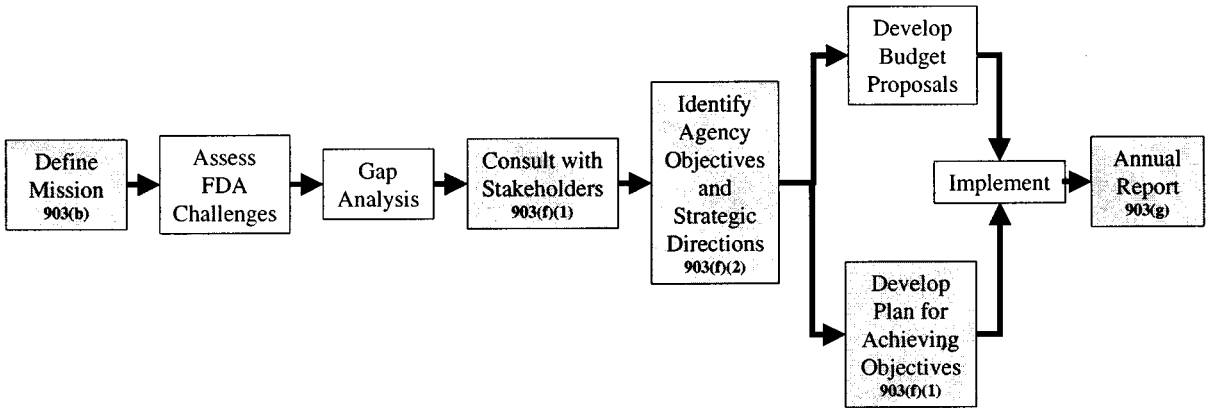
Figure 1: FDAMA's Refocus of FDA's Strategic Management Process

(Shaded areas are FDAMA changes to Section 903 of FFD&C Act)



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Mission Development

Over the years, Congress has dramatically expanded the responsibilities of the FDA. The Federal Food and Drugs Act of 1906, the first national statute enacted by Congress to regulate the American food and drug supply, gave FDA's predecessor agency the authority to remove adulterated or misbranded foods and drugs. In ensuing years, Congress enacted a series of statutes that expanded FDA's responsibilities in a number of directions, including: new product areas (cosmetics, biologicals, and medical devices.); additional product characteristics (e.g., efficacy as well as safety); and additional perspectives from which to monitor products (e.g., monitoring prior to market introduction as well postmarket monitoring).

Beginning in 1996 with the passage of the Animal Drug Availability Act (ADAA) and continuing in 1997 with the passage of FDAMA, Congress enhanced FDA's mission in ways that recognized the Agency would be operating in a 21st century characterized by increasing technological, trade, and public health complexities. To meet these challenges, Congress added explicit phrasing to the Agency's mission statement to ensure that FDA would coordinate its own efforts with regulatory counterparts worldwide. In addition, Congress recognized that external scientists, medical experts, and public health experts must play an increasing role in Agency responsibilities. It defined a new emphasis to be placed on regulatory processes and required more interaction with stakeholders. Through FDAMA, Congress intends to ensure timely availability of safe and effective new products that benefit the public, and to ensure that our nation continues to lead the world in new product innovation and development.

DAMA defines FDA's new mission as follows:

> The Administration shall—
> (1) promote the public health by promptly and efficiently reviewing clinical research and taking appropriate action on the marketing of regulated products in a timely manner;
> (2) with respect to such products, protect the public health by ensuring that—
> (A) foods are safe, wholesome, sanitary, and properly labeled;
> (B) human and veterinary drugs are safe and effective;
> (C) there is reasonable assurance of the safety and effectiveness of devices intended for human use;
> (D) cosmetics are safe and properly labeled; and
> (E) public health and safety are protected from electronic product radiation;
> (3) participate through appropriate processes with representatives of other countries to reduce the burden of regulation, harmonize regulatory requirements, and achieve appropriate reciprocal arrangements; and
> (4) as determined to be appropriate by the Secretary, carry out paragraphs (1) through (3) in consultation with experts in science, medicine, and public health, and in cooperation with consumers, users, manufacturers, importers, packers, distributors, and retailers of regulated products.

Emerging FDA Challenges

FDA must address a wide range of challenges that serve as potential obstacles to successfully carrying out its health protection mission in the 21st century. To the extent that these challenges remain unaddressed, a gap between expectation and performance will persist. This Plan represents a blueprint for addressing these challenges, thereby narrowing the gap.

Key challenges that FDA faces now and in the near future include:

1. Research and development-fueled pressures on regulatory responsibilities;
2. Greater product complexity driven by breakthroughs in technology;
3. Growth in recognized adverse effects associated with product use;
4. Unpredictable, new health and safety threats;
5. More targeted needs and awareness of citizen-stakeholders;
6. Emerging regulatory challenges in the international arena;
7. Increased volume and diversity of imports; and
8. Federal budget constraints.

Each of these challenges is discussed briefly below.

• Research and Development-fueled Pressures on Regulatory Responsibilities

Each year, FDA-regulated firms add more than $2 billion to domestic research and development efforts. For pharmaceuticals alone, this effort currently exceeds $20 billion total, which is triple the effort of only 10 years ago. The growth in research budgets at public agencies such as NIH surely will result in a greater number and wider variety of products that FDA must, by statute, regulate. More importantly, the speed of product development also is accelerating. By streamlining the commercial review process, FDA has helped to reduce the time between discovery and Agency evaluation. But this streamlining also gives the Agency very little time to develop a regulatory framework to handle new technologies. Thus, it is imperative for FDA to continue to engage in close interaction with industry in the early stages of product research and development.

The volume, variety, and speed of new product development presents FDA with the twofold goals of: (1) ensuring that consumers enjoy timely public health benefits from these products; and (2) minimizing the health risks associated with consumers' use of these products. FDA resources devoted to premarket review of these products must be carefully allocated so that *both* goals are addressed. The Agency's current level of resources, however, cannot adequately address both goals in all of the product areas for which the Agency has responsibility.

• Greater Product Complexity Driven by Breakthroughs in Technology

Product complexity continues to increase. FDA-regulated products will be characterized by unprecedented technological sophistication, while also providing unparalleled health benefits for the U.S. public. The continued benefits of genetic engineering warrant particular attention. New products generated by the biotechnology revolution cover a broad spectrum, including: genetic probes that serve as powerful diagnostics; genetically engineered drug and gene therapies; and biotechnology-based food modifications such as protein-enhanced vegetables. Increased understanding of the human genome, as well as of the genetic make-up of other organisms (genomes of other animals and plants), will yield many new and different products and applications.

The number of sources that produce these new genetically engineered products continues to escalate. The number of biotechnology firms grew dramatically from the early 1980s through 1993, so that by 1993 there were 1,272 firms, more than a threefold increase over the pre-1981 number. By April 1997, nearly 300 biotechnology drugs were in development, tripling the number that were in development in 1989. FDA must have access to the necessary scientific expertise to be able to address the complexity of these new products, and to provide sound regulatory decisions.

Microprocessor and miniaturization technologies are rapidly expanding and enabling significant improvements in implantable medical devices such as pacemakers, cochlear implants, and closed-loop medicine delivery systems that monitor conditions within the body and administer treatments as required. Progress in artificial intelligence has increased companies' ability to apply pattern recognition techniques in such

products as Pap smear readers and neural net classifiers.

New combination products, such as food-drug and drug-device combinations, will continue to be generated through the application of biotechnology techniques. Such developments foster improved versions of products already developed and approved, as well as entirely new products. New biological-based products will require the development of new data profiles, because the data used to determine the safety of chemical-based products of the past are neither sufficient nor appropriate for predicting the safety of these new products.

Biotechnology also is being used to develop new assessment tools. More emphasis is being placed on new approaches to assess the product safety of food, dietary supplements, and health care products. These tools include bioassays to improve safety assessments of carcinogencity and to address emerging concerns of neurotoxicity, immunotoxicity, and developmental toxicity.

• Growth in Recognized Adverse Effects Associated With Product Use

New technologies have provided an explosion of innovative diagnostic and therapeutic health products. The consequences of this explosion, however, include a parallel expansion of adverse effects associated with product use. Although the benefits realized from these products still greatly outweigh the problems associated with consumption, these problems must be addressed. To illustrate, FDA received more than one-quarter million reports of suspected drug-related adverse effects in 1997, and this number of adverse reports continues to increase annually. FDA estimates that nearly one million patient injuries and deaths each year are associated with the improper use of FDA-regulated products. Additional injuries and deaths occur under conditions of proper use and accidental injury. For example, of the more than 70,000 injury reports related to medical devices received annually, approximately 25 to 40 percent of the injury or death reports may be attributed to device misuse or operator error. Injury reports received by FDA only represent between 1 and 10 percent of all injuries associated with the use of medical devices. Using these figures, as many as 400,000 incidents per year resulting in patient injury or death may, at least in some way, be attributed to the user-device interaction.

Currently, the FDA Center for Food Safety and Applied Nutrition (CFSAN) receives reporting on food additives, cosmetics, and special nutritionals from the field offices and other sources. To achieve efficiency in monitoring and responding to adverse events, the Center is proposing the establishment of an integrated adverse event reporting system for food and cosmetic products. As the Agency develops more comprehensive adverse event reporting systems, particularly in collaboration with other institutions, the number of reported adverse events likely will increase. If surveillance capability does not expand, the magnitude and severity of product use problems will, to a large extent, remain unknown, and the health risks will be unaddressed.

• Unpredictable, New Health and Safety Threats

FDA continues to face a range of threats to public health that appear in a random and discontinuous pattern. For example, crippling infectious diseases such as tuberculosis are reemerging, bovine spongiform encephalopathy (BSE) became epidemic in the United Kingdom and was unexpectedly linked to the human disease, Creutzfeld-Jakob disease (nvCJD), and more virulent and antibiotic-resistant bacteria have been discovered in food products around the world. These unpredictable threats, coupled with the growing incidence of disease-causing organisms' resistance to existing drug therapies, challenge both industry and FDA to bring innovative, safe, and effective treatments to the market rapidly. The Agency also must address crises that require emergency responses, whether they are the discovery of pesticides in selected imported products, *Escherichia coli* outbreaks, or intentional product tampering. These events are byproducts of several factors, including continually expanding global trade; new entrants into domestic industries—particularly where emerging technologies are present; and economic pressures on regulated firms to reduce costs in order to ensure short-term survival.

The unpredictable nature of a significant portion of FDA's compliance activity also acts as a severe limitation to fulfilling statutory mandates of inspectional coverage. FDA is attempting to augment its inspection capability with strategies that call for collaboration with states, use of third parties to verify industry compliance, and augmenting industry quality control mechanisms. But even these augmentation strategies require front-end investments to develop systemic capabilities such as data validation, data sharing, and auditing to determine whether protocols are in place. In addition, some stakeholders oppose other third-party involvement. Consequently, in the short run FDA—even in conjunction with collaborators—will not be able simultaneously to satisfy statutory inspection requirements and address all current health and safety threats.

• More Targeted Needs and Awareness of U.S. Citizens-stakeholders

A more knowledgeable and diverse consumer population is escalating expectations for more information, as well as information that is more tailored to their particular needs, concerning the safety of FDA-regulated products. American consumers have become more health-conscious during the 1990s and are seeking more information on the impact of medical products and food on their health. FDA must distinguish between the risks perceived by consumers and their actual risks, and respond accordingly. Based on the additional information that FDA provides, consumers are playing a larger role in protecting their own health.

The elderly population provides a good illustration of why FDA must target its information and regulatory policies to fit the needs of particular market segments. Although the elderly are by no means the only segment with special needs, their numbers have become much more prominent in the general population. By the year 2000, Americans aged 75 and older will be the fastest growing group. The elderly (those over 65) have disproportionately high health care demands. Challenges associated with this patient subpopulation, such as multiple drug interactions, different physiological characterizations and reactions to drug regimens, and the need for better medical device design for home self-diagnostics and therapies, will become more acute. These challenges will require greater inclusion of the elderly in clinical testing for drugs, medical devices, and other FDA-regulated products. Further, the increasing educational needs of the elderly will require more focused education programs, including specific dietary information and foods targeted to their nutritional requirements. The elderly population and food service workers who prepare food for the elderly also will require special education initiatives concerning proper food handling, because as the population ages it becomes more susceptible to foodborne diseases.

• Emerging Regulatory Challenges in the International Arena

FDA participates in the world community of developed, underdeveloped, and developing economies and regulatory authorities. Radical changes in the dynamics of the world structure are underway, driven by several forces: (1) an increasing number of global and multinational firms that produce FDA-regulated products; (2) increasing sophistication of unified economic, political, and regional entities (e.g., the European Union [EU] and Pacific Rim countries); and (3) the response to these conditions on the part of regulatory/standard-setting entities.

The larger drug, biological, device and food firms now operate as multinational companies. New products will be developed, produced, and marketed through a highly networked and global commercial system. The system will have great power to satisfy consumer needs, but will be much more complex to monitor for potential risk than has been the case in the past. This situation will require sophisticated international regulatory responses. Further, the regulatory response by U.S. interests must preserve the delicate balance at the international level between preventing unnecessarily high-risk products from entry into the country, while providing access to novel, important therapies or foods to the American public.

The multinational and global firms are sharing center stage with an increasingly organized set of regional economic and political entities such as the EU, Pacific Rim organizations, North America Free Trade Act (NAFTA) participants, etc. These entities are amassing the economic and political power to attract world trade. The pace of their development is often uneven, but the longer term direction is clear. Raw materials and joint ventures that stretch across national borders are all becoming international elements for FDA to regulate where previously these were purely domestic phenomena. The Agency must now make new decisions on how (or if) to manage each of these new elements. Increasingly, FDA must take into account the global trade implications of its decisions.

Organizations such as the International Committee on Harmonization (ICH), the International Standards Organization (ISO), the Global Harmonization Task Force, the International Cooperation on Harmonization of Technical Requirements of Registration for Veterinary Medicinal Products (VICH), and Codex are becoming increasingly important in the determination of the level of acceptable product safety, quality, and efficacy for products trading in the international arena. FDA must maintain a viable voice as standards are prepared and speak with a voice that represents the interests of all of its stakeholders, whether they are consumers, patients, health practitioners, or the regulated industry.

• Increased Volume and Diversity of Imports

Imported products regulated by FDA represent a significant component of total U.S. consumption. In some sectors, such as seafood, the percentage of total consumption represented by imports is approximately 50 percent. FDA's responsibilities in the import arena continue to expand, without a corresponding increase in resources to do the job. To illustrate: The volume of imports has grown steadily over the past few decades. By 1998 an estimated 4 million FDA-regulated import line items arrived in the U.S. The number of food items, representing the majority of those imports, increased by 21 percent over the last year alone! During that same period, FDA resources to address imports remained essentially level.

And the complexity is increasing—the reality of a truly global economy is adding significant regulatory challenges for FDA. These products are originating in countries that often have less developed health/safety regulatory structures. The increase in volume, variety, and sources of imports may be accompanied by increases in novel pathogens, microbial contamination, and other public health concerns and regulatory challenges for FDA. Developing countries, which once provided raw materials for U.S. manufacturers, and assemblers are increasingly providing finished products to the U.S. market. This conversion could increase the risks associated with such products.

• Federal Budget Constraints

Recent budget proposals and appropriations acts have addressed emerging public health issues (such as AIDS) and long-standing public health problems that received insufficient attention in the past (including reducing youth tobacco use, improving food safety, and accelerating prescription drug approvals). While those problems continue to need attention, inflation has reduced real resources available for FDA's other public health responsibilities, which are necessary to meet the obligations delineated in FDAMA. These include inspections to ensure product safety; review of devices, food additives, blood products, animal drugs, and generic drugs; and adverse event reporting and followup.

Analysis of the Gap Between What is Expected of FDA and Its Actual Performance

FDA faces a critical issue today. Because of a convergence of challenges outlined in previous sections, the Agency has been unable to fully meet its explicit statutory obligations; nor has it been able to completely guarantee the more implicit health and safety responsibilities the statute requires and the public demands. Figure 2 illustrates that a sizable gap still exists between statutory requirements of ''on-time review'' for several product areas, and what FDA currently is able to deliver. Figure 3 shows a similar gap between mandated and actual inspectional coverage for FDA-regulated industries.

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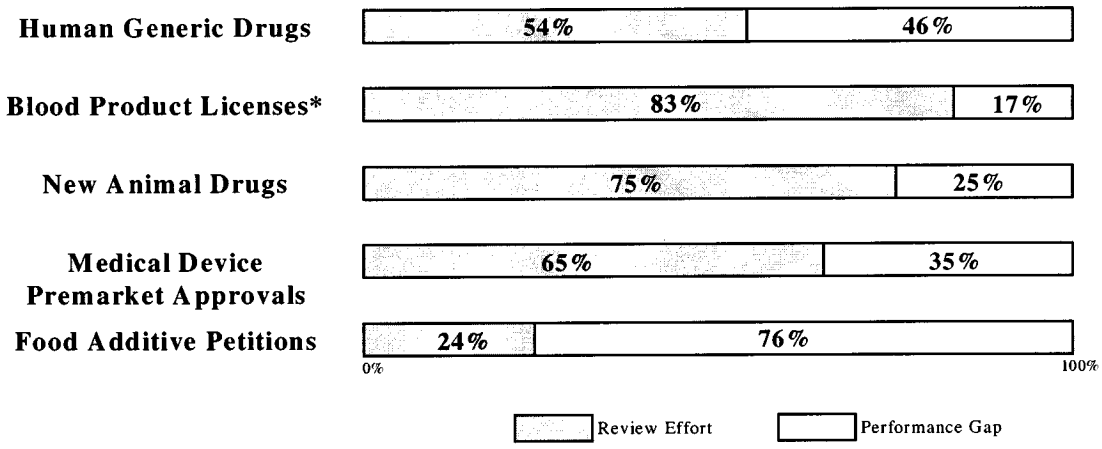
Figure 2: New Product Review Performance Gaps

(Percentage of FY 1997 Reviews within Statutory Time Frames)



* There is no statutory requirement. FDA has adopted an internal 12-month time frame.

Figure 3: Inspection Performance Gaps

(FY 1999 Projected Inspection Effort and Remaining Performance Gap)

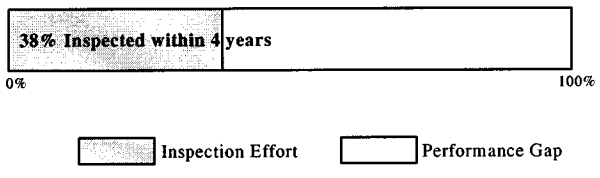
Statutory Interval

Biennial: Drug, Biologic, & Device Manufacturers* (16,000)

No Statutory Interval

Four-Year Average Cycle: Food Establishments (49,000)**

Four-Year Average Cycle: Drug, Biologic, & Device Facilities not included in Biennial Requirement (33,000)**



* Statutory requirement includes manufacturers, processors, repackers, and relabelers.

** Selected high-risk categories inspected more frequently.

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The agency has listened carefully to its stakeholders over the past several months and has combined their views with its own emerging strategies to develop a plan for narrowing the gap. The following section provides a summary of stakeholder views.

Stakeholder Consultation

FDA's assessment of the challenges it faces in fulfilling its mission and the identification of the disparity between expectations and what is achievable given the current climate set the stage for consultations with its external stakeholders. This consultation is necessary to determine the most effective ways of narrowing the gap. FDA depends on the views of its stakeholders for two crucial reasons:

(1) stakeholders are affected by the outcomes of FDA's strategies and should therefore play a role in formulating them; and
(2) stakeholders are also the collaborators that are necessary for successful implementation of the Plan.

In the sections that follow, the process of stakeholder consultation is discussed, and a summary of their views is provided.

The Process

Section 406(b) of FDAMA prescribes that the plan for statutory compliance be developed:

after consultation with appropriate scientific and academic experts, health care professionals, representatives of patient and advocacy groups, and the regulated industry.

The experts and representatives referenced in Section 406(b) comprise the constituency of the FDA. The Agency informally consults with these constituents on a regular basis. Section 406(b) codifies this process and provides a mechanism for formal input from and feedback to its constituency.

In response to this requirement, the Agency designed a process that provided multiple avenues for input, including the following:

- Public meetings were held and tailored to address concerns associated with each of FDA's product centers: foods, human drugs, animal drugs, biologics, and medical devices. In addition, there was a meeting focusing on health professionals and an Agency-wide meeting addressing cross-cutting issues.
- Dockets were provided for stakeholders to make additional comments subsequent to the public meetings. These dockets will remain open indefinitely.
- Electronic communication vehicles were established that allow stakeholders to communicate with FDA via Internet responses to the Agency's home page as well as through e-mail.
- District Consumer Forums were held to solicit comments from stakeholders.
- On going communication vehicles were used to actively solicit stakeholder views on current and future directions for the Agency. These vehicles include speeches made by the Agency's senior leadership, ongoing exchanges in smaller forums such as workshops, and one-on-one conversations.

FDA adopted a uniform approach in framing the stakeholder discussions and comments. Agency officials first outlined the stakeholder consultation process. The leadership then provided a framework outlining the emerging technological and public health challenges faced by FDA. Finally, to focus stakeholder comments and discussion, questions (Appendix B) were developed that related to each of the six objectives addressed by the 406(b) plan and were available to stakeholders prior to the meetings.

The process of engaging the Agency's stakeholders and receiving useful feedback is an ongoing one. This initial round of stakeholder views will continue to be analyzed and interpreted during Fall 1998. Results of the analysis will be shared with FDA's external as well as internal audiences. The next round of formal stakeholder meetings is being scheduled for Spring 1999, and regular contacts will continue to be maintained. Although longer term assessment is forthcoming, a preliminary evaluation of stakeholder views has been conducted. An overview of these views is provided in the next section. Stakeholder comments are assessed in greater detail in Part Two of the Plan and are related to Agency strategies.

Summary of Stakeholder Viewpoints

FDA's stakeholders commented on many aspects of the Agency's operations. The recommendations made by stakeholders regarding the Agency's priorities and the strategies FDA should use in carrying out its responsibilities reflect a wide range of concerns and perspectives. The full context of stakeholder views expressed at public meetings and in written comments are captured in transcripts and dockets that are available on FDA's Internet Web page *http://www.fda.gov/oc/fdama/comm*. Appendix B–4 also provides a compendium of stakeholder recommendations, classified both by 406(b) objectives and by the strategic directions that are identified in the next section of the Plan. Major themes that emerged from the stakeholder comments are summarized below.

Areas of Consensus

Most stakeholders agree on several broad issues. Many agreed that FDA priorities should be risk-based, scientifically rational, and focused on protecting public health. In addition, the Agency should view meeting its statutory obligations as a high priority. A number of organizations cautioned that the Agency should limit its participation in new activities, especially those that go beyond the scope of its core statutory requirements. Although stakeholders varied in their interpretations of core responsibilities, some stakeholders highlighted the importance of preserving FDA's regulatory role and encouraged the Agency to develop more creative strategies to exercise its regulatory responsibilities. Many stakeholders acknowledged the difficulties inherent in making trade-offs among program activities when resources are constrained.

Making new safe and effective treatments available to patients in a timely manner is also a high priority for FDA. To optimize the performance of the premarket review and approval system, stakeholders recommended that FDA continue to re-engineer its systems and strive for internal efficiencies; communicate earlier in the premarket review process, more frequently, and more openly with industry and other stakeholders; and make FDA policies and procedures more consistent and more transparent to industry and the public. Several groups would like FDA to adopt a more uniform and consistent approach to addressing risks of public health significance. Consistency of FDA policies and procedures seemed to be a greater concern than their transparency.

Requests for improved communication emphasized two-way communication—not only from the FDA to its stakeholders but also from stakeholders to FDA beyond adverse event reporting. Stakeholders value FDA developing a strong scientific and analytic base for its regulatory decisions. They believe that FDA should use the expertise of other organizations to help meet its goals. For example, delegating or collaborating on certain functions (such as research, standard-setting, and some aspects of product review) to third parties were offered as a means of leveraging limited resources.

Several stakeholder groups want to be more involved in FDA advisory committees. These views are consistent with FDA's transition to a more open and collaborative relationship with its

regulatory counterparts and industry. Continued FDA leadership and participation in the international arena was encouraged to ensure that international standards and guidelines are consistent with U.S. requirements. Even through it was recognized that FDA had limited resources to meet all of its statutory obligations and to meet public expectations, industry representatives opposed the collection of user fees for medical devices and the blood banking industry, as well as for veterinary products, as a means of funding premarket review activities. Similarly the concept of an ''FDA seal'', viewed as a form of user fees, was not supported.

- Areas of divergence

Although the first order of concern of all stakeholders is consumer health protection and availability of medical products, there is no consensus on the role FDA should play nor what approach should be taken in this daunting task. Key differences among stakeholders include the following:

FDA's Role in Education

Stakeholders differed sharply in their opinions on the legitimacy and primacy of FDA's role in consumer education. While some stakeholder groups believe that industry and health professionals should be responsible for consumer education, others assert that FDA should play an essential role in providing objective information about regulated products to consumers and in facilitating patient participation in ongoing clinical trials of promising new therapies. One consumer advocacy group, the National Council on Patient Information and Education, requested FDA's support in developing a collaborative, national consumer

FDA's Enforcement Activities

Some stakeholders called for expanded FDA authority and additional resource appropriations to allow the Agency to carry out its responsibilities, for example, in the areas of drug safety monitoring and monitoring the sale of unapproved veterinary products. Other stakeholders acknowledged that FDA would need to share enforcement responsibilities with others. For example, one group supported a division of tasks in the inspection arena, with FDA covering the imports, and states being responsible for domestic inspections.

Use of Third Parties

There were mixed views in this area as well. Many consumers preferred that FDA regulate the industry more directly, while several industry representatives advocated for greater use of third parties, as long as the arrangement was carefully monitored by the Agency.

Advisory Committees

Views regarding the composition of FDA advisory committees diverged greatly. Some pressed for broader presentation of interested persons while others advocated that FDA place greater emphasis on the depth of knowledge of advisory committee members. The Agency was urged to recruit renowned experts to serve on advisory committees. Some advisory committees were criticized for favoring nonscientific issues over sciences when they make recommendations.

- Unresolved Issues

Perhaps the issue that remains most problematic is the overall question of balance among FDA's functions. The appropriate mix of premarket review, post-market inspection, and surveillance activity is an ongoing topic of debate among the Agency's stakeholders. One stakeholder summed up the issue:

''How should FDA balance the need for strong and timely premarket review programs with the need for effective postmarket inspection, surveillance, and enforcement programs? That is like asking the American people to find a balance between building safe aircraft and providing adequate maintenance over the course of a plane's life.'' (Patient Group)

Although stakeholders expressed their views regarding the emphasis FDA should place on various issues, these comments frequently focused on a single FDA Center or two Competing issues. FDA does not have sufficient information at this time about the priority Agency stakeholders wish to assign to a particular issue relative to other issues competing for resources within an FDA Center or within the Agency as a whole. In some instances the proposed strategies appear to be contradictory. For example, how should the Agency balance setting risk-based priorities or meeting public expectations when doing so directly competes with meeting its statutory obligations?

Identification of Agency-Wide Objectives and Strategic Directions

The six objectives specified in FDAMA Section 406(b) and outlined on page 1 of this Plan, provide FDA with a broad framework for meeting its statutory requirements and public expectations. The Agency's senior leadership believes the following strategic directions are necessary to focus its efforts in achieving the objectives set forth by Congress. These directions represent an amalgam of approaches that have been emerging for several years, and which have been modified both by new FDA challenges and by the productive suggestions made by external stakeholders. Figure 4 identifies the link between key stakeholder themes and the strategic directions outlined in this section of the plan.

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Figure 4: FDA's Strategic Directions

• Themes from Stakeholders

Establish Risk-Based Priorities
- *Setting priorities*

Adopt a Systems Rather than Piecemeal Approach to Agency Regulation
- *Importance of an international strategy*
- *Adverse Event Reporting*
- *Focus inspections on systems deficiencies*

Work more Closely with External Stakeholders
- *Need for transparent FDA policies and procedures*
- *More open and communicative FDA*

Re-engineer FDA Processes
- *Need for some management reform*
- *FDA should be more creative—while maintaining control*

Strengthen the Scientific and Analytical Basis for Regulatory Decisions
- *The value of strong scientific base*
- *Strengthen the science base within FDA advisory committees and keep science base current*
- *Need for adequately trained/qualified FDA Staff*

Capitalize on Information Technology

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The strategic directions are *broad* in scope and cross-cut components of the organization. As such, they provide a context to guide all of the Agency's more specific goals and programs. They also serve as a way to galvanize diverse activities into a set of unified directions for the long-term.

(1) Establish risk-Based Priorities

Although the importance of setting risk-based priorities was a concept repeatedly endorsed by many stakeholder groups, there was not consensus regarding what constituted the highest risk areas. FDA must listen to its stakeholder community, but then it must decide, based on continuing consultation with its stakeholders, which health and safety risks most directly threaten the well-being of U.S. consumers, and allocate its resources accordingly. In the harsh light of limited resources, FDA simply cannot meet everyone's demands and cannot address all risks with the same degree of urgency or intensity. For example, the Agency is unable to respond to its highest priority health risks and at the same time fully meet its biennial statutory inspection requirements for drugs, biologics, and medical devices. it may be appropriate to reassess the practicality of mandates that emphasize industry coverage, regardless of risk, when those mandates may divert limited resources away from addressing serious health and safety concerns. The Agency has and will continue to increase the efficiency of ''fast track'' processes to address the most urgent needs for therapies so that these therapies can enter the marketplace rapidly. Resources will continue to be redirected toward the review of these products. Surveillance and compliance efforts also will continue to be directed toward identifying and taking action to correct the most serious health and safety problems associated with products that are in the marketplace or about to enter the market. The Presidential Food Safety Initiative will continue to focus attention and devote resources to those areas of the food supply that pose the greatest risk of illness and/or death to consumers.

(2) Strengthen the Scientific and Analytical Basis for Regulatory Decisions

A strong science base continues to underpin each of the Agency's regulatory decisions. Such decisions must be made throughout the lifespan of FDA-regulated products from initial research, development and testing, through production, marketing and consumption. A strong science base consists of the expertise, the risk assessment protocols, the test methods, product guidance and performance standards, and the facilities and equipment necessary for conducting excellent science. The emerging emphasis in this strategic area is to seek means for achieving synergies in science capability through access to and collaborative efforts with sources of scientific expertise beyond FDA. A recent example that the Agency hopes will achieve research synergies through collaboration is the pharmaceutical quality and drug development science initiative that the Agency has begun to pursue under a cooperative research agreement among FDA, professional societies, and industry. The initiative will provide a venue to conduct research on pressing questions about pharmaceutical manufacturing that can inform regulatory decisions regarding needs in such areas as supplement submission requirements or bioequivalence studies after there are manufacturing changes. Such collaborative efforts are reinforced in the objectives identified in FDAMA Section 406(b). The key lies in ''ensuring access to the expertise,'' wherever it is most cost-effective.

(3) Work More Closely With External Stakeholders

FDA will need to multiply the Agency's capability to address complex public health problems by working with stakeholders in planning, implementing, and evaluating solutions to these problems. The solutions don't lie solely in expanding the mass of the Agency. Consumers, the regulated industry, health professionals, and FDA's regulatory counterparts in the U.S. and abroad each represent components of a total network that can potentially improve health outcomes. To help ''activate'' that network, FDA is engaged in several strategies some just emerging and others in a more mature phase. These ''activation strategies'' include: collaboration with stakeholders to create synergies in protecting the public health; ensuring that stakeholders are well informed about the Agency's regulatory processes [the processes should be as transparent as possible] and the products that are affected by these processes; involving stakeholders early in the Agency's processes; and ensuring that all affected stakeholder groups' interests are well represented in product testing and approval decisions.

FDA is striving to create synergies through collaboration with appropriate outside colleagues in product research and testing, development, production, marketing, and consumption/use to ensure safety, quality, and efficacy.The Agency's Joint Institute for Food Safety and Applied Nutrition [JIFSAN] (with the University of Maryland) and the Moffett Center in Illinois are illustrative of such synergies working at the level of applied research and development to ensure safe foods.

Industry representatives and health professionals made it clear to FDA during the stakeholder consultation process that they can be more effective colleagues in improving health outcomes in their role as product developers and users if they are (1) well informed about the Agency's regulatory review, surveillance, and compliance processes; and (2) consulted prior to regulatory decisions on both the pre- and post-market side of product commercialization. FDA will continue implementing strategies to engage in preventive problem solving, as well as initiatives that will make the Agency's processes as clear and understandable as possible to participants.

Consumers and patients expressed a need to have prompt, complete, understandable, and unbiased information about products that FDA regulates, particularly new therapies. Well-informed consumers are more effective contributors to the management of their own health risks. FDA has launched several initiatives that are intended to keep the consumer well-informed through such vehicles as publishing the availability of important new drugs on the Internet. FDA is also attempting to ensure that the interests of all affected patients are well represented in such areas as clinical trial designs for new therapies. In addition, FDA will ensure that the interests of the consumer are represented in such deliberative bodies as advisory committees when recommendations on new products are being considered.

(4) Re-Engineer FDA Processes

FDA has used both an internal and an external focus in redesigning many of its regulatory review processes. From the external perspective, FDA is implementing several protocols that will result in simplified regulatory approaches and, as a result, a reduced burden for the regulated industry. Many of these regulatory reinventions are embodied in provisions in FDAMA. For example, the Agency may start review of a ''fast-track'' drug application before the application is complete if preliminary clinical data demonstrate that the product may be effective. Fast-track status also is being established for humanitarian medical devices, and new product development protocols will allow medical device sponsors to use

recognized study results that have been generated by other sources as part of their own application submission. Other regulatory simplification strategies have been instituted independent of FDAMA. For example, a phased review process for animal drugs has been designed that enables the Agency to provide periodic feedback to product sponsors throughout the drug review process to foster ''continuous improvement'' in the application.

FDA is also focusing internally to achieve greater efficiencies and effectiveness in its review and tracking processes. For example, implementation of project management techniques allows an opportunity for convergent thinking and action to occur so that multiple disciplines can coordinate their efforts in providing thorough but timely reviews of product sponsors' applications.

(5) Adopt a Systems Rather Than a Piecemeal Approach to Agency Regulation

Several stakeholders during the public meetings noted that they could be more efficient and effective participants in promoting and protecting public health if they could understand the total context of what the Agency was trying to do and what its future directions were. The establishment of a systems approach within FDA is closely related to the establishment of risk-based priorities. Use of a systems orientation is an effective way to identify what is truly high-priority risk and then to address that risk in a systemic manner. Systems solutions, such as the Food Safety Initiative, the integrated adverse event reporting initiative, and the important monitoring system, are examples of FDA acting in concert with other collaborators to address the highest priority, most pervasive risks facing consumers.

The Agency also has adopted a systems orientation in many of its individual programs. To illustrate, medical device inspectors have embarked on a new approach to determine industry compliance with Good Manufacturing Practices (GMPs). They are pilot-testing a systems-oriented inspectional strategy whereby medical device plants are given guidance on the establishment of a total Device Quality System, so that the control of product safety and quality is owned by the firm, rather than their having to respond to a series of external compliance requirements that must be responded to one at a time. The seafood Hazard Analysis and Critical Control Points (HACCP) initiative provides another example where FDA worked with the seafood industry to implement a systems approach to ensure the safety of seafood consumed by the American public.

(6) Capitalize on Information Technology

FDA has been on a long course of improvement in taking advantage of the opportunities offered by a rapidly evolving information technology environment. Information technology has been used for quite some time by the Agency in order to improve internal efficiencies. For example, a key element in accelerating the review of new drug therapies has been automating major portions of the drug review process. When both product sponsor and Agency reviewer can use electronic communication to establish a common ground of understanding, then all parties benefit. It is a critical element that has become pervasive in all mission-oriented as well as support activities.

More recently, the Agency has turned its attention to using information technology as a way of improving communication with external stakeholders. One of the most powerful examples of how stakeholders are assisted is in the rapid provision of information on new drug therapies via the Internet to consumers and patients. FDA's home page provides an opportunity for all of FDA stakeholders to be aware of recent Agency regulatory decisions, and, just as important, to receive input in the form of suggestions and other opinions from Agency officials. The Agency will expand use of information technology to bring relevant information to bear in the area of produce surveillance and adverse event reporting. Well-designed and integrated information systems will dramatically reduce the gap between adverse effects associated with consumption and problem correction.

Making the Transition From Strategic Context to Targeted Planning

The strategic directions outlined above provide the context for understanding Part Two of the 406(b) Plan. In Part Two, specific performance targets and associated strategies re outlined for FY 1999. Part Two is organized into sections that correspond to the six objectives outlined in Section 406(b) of FDAMA (Section 903(f) of the FD&C Act as amended). Thus, specific performance targets can be directly related to achieving the objectives of the Act.

Within each objective, strategies for FY 1999 relfect the Agency- wide strategic directions identified in Part One. Thus, the Agency's targeted planning for FY 1999 is strategically aligned with its intended directions over the next several years.

Part Two—FDAMA Plan For FY 1999

This Plan outlines key performance goals and strategies designed to achieve these goals during FY 1999. The Plan serves several purposes:

(1) It provides a blueprint for narrowing the gap between what FDA is expected to do by law and by the stakeholder community and what FDA currently can accomplish given its existing Agency resources.

(2) It responds to Section 406(b) of FDAMA, which requires the Agency to develop such a plan:

''The Secretary, after consultation with appropriate scientific and academic experts, health care professionals, representatives of patient and consumer advocacy groups, and the regulated industry, shall develop and publish in the Federal Register a plan bringing the Secretary into compliance with each of the obligations of the Secretary under this Act.''

(3) It moves FDA closer to fulfilling its strategic goals, and thus, its mission of consumer health protection and promotion.

(4) Finally, the Plan provides a specific set of performance commitments that will serve as a basis for managing towards results and for reporting progress.

The Plan is organized according to the six objectives outlined in Section 406(b) of FDAMA.

These objectives address critical components of FDA's responsibilities. The Agency, working in collaboration with key players in both the public and private sector, will pursue each objective as part of a total consumer health protection and enhancement system. The process begins with the research and development of new products with great health- and life-sustaining potential, and ends with the safe and effective consumption of these products. Figure 5 illustrates how FDAMA objectives are crucial elements of FDAs total contribution to beneficial public health outcomes.

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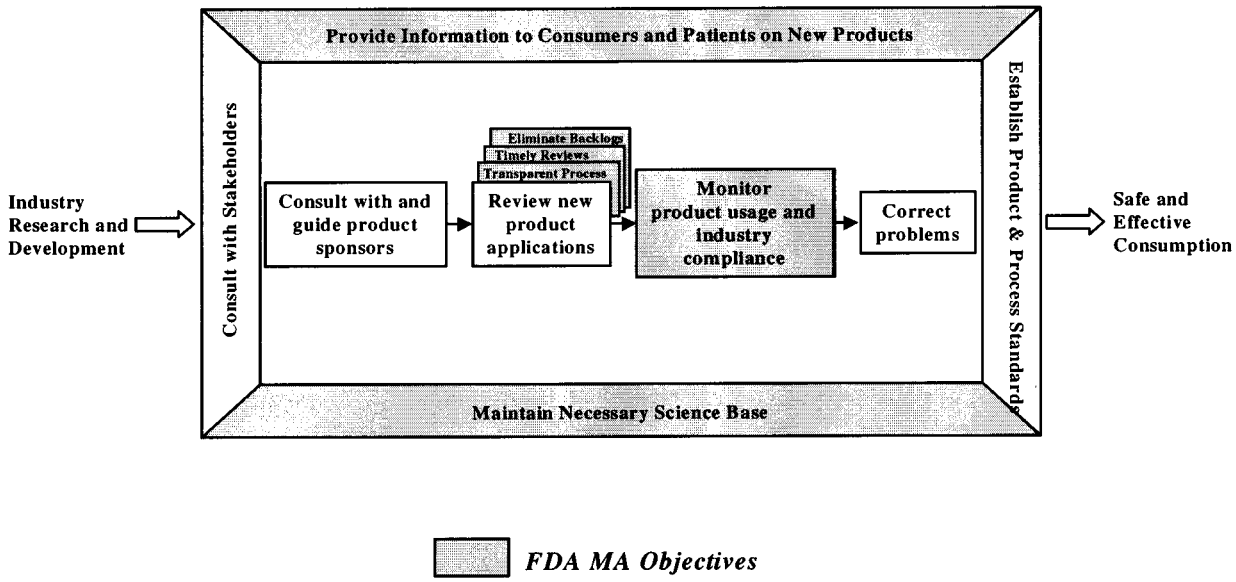
Figure 5: How FDAMA Objectives Support FDA's Responsibilities



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The six 406(b) objectives are addressed in five sections below. The five sections examine the FDAMA objectives in order by objective (A, B, C, D, and E&F). Each section provides:

- Identification of Needs—Outlines the unmet demands stated by law and expressed by the Agency's stakeholders, which FDA must address to achieve the FDAMA objective and to fulfill its mission.
- Stakeholder Views—Selected Stakeholder opinions on the importance of the need being addressed.
- Current Innovations and Reinventions—Creative improvements FDA has underway that will help achieve objectives.
- Plan for Meeting Statutory Requirements and Public Expectations—Key strategies that are planned for the future that will narrow the gap between expectations and current capabilities.
- Performance Goals for FY 1999—FY 1999 goals are based on final Congressional appropriations and may be subject to adjustment pending Agency resource allocation decisions.

Objective A—Maximizing the Availability and Clarity of Information About the Process for Review of Applications and Submissions (Including Petitions, Notifications, and any Other Similar Forms of Requests) Made Under This Act

1. Identification of Needs

FDA's ability to provide clear, adequate, and timely information on its application review processes must be improved by making FDA processes transparent to stakeholders and involving stakeholders early in the review process.

Make FDA Processes Transparent

While the Agency has developed written information (i.e., regulations, guidance documents, or internal procedures) on its review processes and requirements, more needs to be done to ensure that stakeholders understand FDA requirements. This lack of understanding is reflected in the quality of regulatory submissions received by FDA. Transparent processes also include openness on how FDA develops its requirements and how those requirements are applied within the agency during the review process.

Collaborate with Stakeholders Early in the Regulatory Decisionmaking Processes

In passing FDAMA, the Congress expected major improvements on how products are reviewed and approved by FDA. To meet this expectation, FDA must change how it responds to the product applicants during the review process—from being reactive to proactive through early applicant consultations. By consultation with product sponsors, the Agency will be able to help define the critical issues that must be addressed in a product application, to define the types of clinical trials that appear necessary, and to avoid unnecessary effort. This shifting of resources is not, however, without cost, and additional resources will be needed to meet the increasing number of product submissions generated by the doubling of biomedical research funding at the National Institutes of Health and by the regulated industry.

2. Stakeholder Views

Stakeholders endorsed the concept of a more open and collaborative relationship between FDA and its regulatory colleagues and industry. Many stakeholders commended FDA for the efforts the Agency has already made to address this objective. Requests for improved communication about application review processes emphasized not only communication from FDA to industry, but also greater stakeholder participation in regulatory decisionmaking. The examples below illustrate some of the further improvements stakeholders requested:

- Make FDA policies and procedures more transparent, particularly those related to Good Review Practices [trade association].
- Provide requested clear, concise, and up-to-date guidance to product sponsors. Where the existing guidance is deemed inadequate or scientifically outdated, FDA should issue guidance about the specific product applications [trade association].
- Work closely with product sponsors to ensure submissions are properly formatted [trade association].
- Provide a sample submission guide to applicants and make available more templates, prototypes, and examples of submissions to clarify FDA's expectations of the regulated industry and to expedite the review process [trade association].
- Provide as much feedback to industry as possible in the earliest time frame because many of the questions that are generated will result in long-term experiments or clinical trials [industry representative].
- Industry input in developing guidance documents, such as the one on inclusion of women in clinical trials, and regulations is key in maintaining the integrity of the clinical trials process and of the application review process [consumer advocacy group].
- Collaborate and interact more with the regulated industries to avoid issuing guidance documents that do not adequately take into account useful perspectives that can be provided by industry to the FDA [trade association].
- Use the formal binding presubmission consultations to reduce backlogs and to speed the approval process. [trade association].
- ''Expedite the approval of appropriate nutrient content claim and health claim petitions and citizen petitions related to food labeling.'' [trade association].

3. Current Innovations/Reinventions

FDA is improving its review processes and specific product applications through collaborative agreements, process re-engineering, and information technology.

Agreements Among FDA, Industry, and Others Enhance Review Processes

FDA, academia, and industry are working to establish a program to provide research to inform and assist FDA in developing regulations and guidance regarding the types of product quality information that should be submitted in a product application (e.g., Collaboration for Drug Development Improvement and Product Quality Research Initiative).

FDA collaborates with regulatory authorities of Europe and Japan on drug development requirements (e.g., International Harmonization).

FDA Continues to Improve Review Processes Through Process Re-engineering

FDA's medical device program improved by providing manufacturers with regulatory options to reduce regulatory burden for lower risk products and by improving communication with manufacturers. As part of the Reinventing Government Initiative (REGO), FDA has simplified the filing process by consolidating review application forms for biotechnology-based drugs, blood, vaccines, and other drugs into just one form. This enables companies to provide higher quality submissions to the FDA and reduces their application preparation time.

During FY 1997 and early FY 1998, the Foods Program conducted under contract a review of deficiencies in over 600 industry-submitted food and color additive petitions. CFSAN currently is reviewing the contractor's report and expects to use the information to improve guidance to petitions and to

implement a stronger refusal to file policy.

FDA Uses Information Technology To Improve Access of Review Processes

The FDA website (*www.fda.gov*) provides specific information to particular stakeholder groups: consumer, industry, state and local officials, patients, health professionals, women, and children.

FDA has published information on its review processes to assist applicants. For example, the FDA Center for Drug Evaluation and Research (CDER) Handbook is available on the Internet.

The Foods Program is completing testing on a document management and workflow system that will replace the current tracking system for petition reviews and will make petition data available on demand in electronic format on reviewer's and administrator's desktops. The new workflow tracking system will permit realtime access to detailed information on petition status and tasks.

4. Plan for Meeting Statutory Requirements and Public Expectations

Section 903 of the FD&C Act, as amended by FDAMA, authorizes the Commissioner to conduct educational and public information programs relating to the responsibilities of FDA. Under FDAMA (Section 406), FDA's mission is expanded to include the prompt review of clinical research and regulatory submissions, harmonization of regulatory requirements with other countries, and consultation of various experts in fulfilling the mission.

FDA's plan for meeting these statutory requirements will encompass a variety of actions intended to make Agency processes transparent and to improve collaboration between product sponsors and the agency. These include:

- Continuation of developing appropriate regulations, guidance documents, and internal operating policies and procedures.
- Expansion of the use of communication media and information technology (e.g., the FDA website) to provide written materials and information on FDA regulatory review processes.
- Improvement of the efficiency and effectiveness of Agency review processes through process re-engineering, project management, performance management, and electronic technology.
- Development of innovative approaches to facilitate sponsor and Agency consultations.

5. Performance Goals for FY 1999

The table provided in this section links the performance goals and measures with statutory requirements addressing information about the review processes. Under the FD&C Act, the Commissioner is authorized to conduct educational and public information programs relating to FDA's responsibilities. These performance goals illustrate two types of efforts. The first type identifies the development of a method that can be applied to a review process. An example would be to recognize a standard used for a medical device review. The second type identifies an improvement to enhance the Agency's ability to provide updated information or to achieve greater capability and capacity for accepting electronic regulatory submissions.

Highlighted below are key performance goals for FY 1999 in the area of electronic regulatory submissions. These goals are critical to the Agency's ability to provide timely review of clinical research and regulatory submissions, which is the intent of FDAMA. For more complete identification of performance goals and statutory requirements see the table at the end of this section.

FY 1999 Performance Goals

Complete the development of industry guidance required for electronic submission by the end of FY 2002.

Achieve electronic submission capability for certificates to foreign governments.

Achieve capability and capacity for electronic submission and archiving of information required to submit New Drug Applications (NDAs) without paper copy by the end of FY 2002.

Achieve capability and capacity for electronic submission and archiving of Abbreviated New Drug Applications (ANDAs) by the end of FY 2002.

Statutory authority	Relevant statute and/or regulation	Relevant FY 1999 performance goals	FY 1997 performance baseline
Applicants are invited to meet with FDA before submitting an application to discuss the presentation and format of supporting information. If the applicant and FDA agree, the applicant may submit tabulations of patient data and case report forms in a form other than hard copy, for example, on microfiche or computer tapes.	FD&C Act, Section 505 and 21 Code of Federal Regulations (CFR) 314.50(f)(4).	By the end of FY 2002, CDER will complete development of industry guidance required for electronic submission.	In FY 1997, electronic signature guidance was published.
Before 30 days after the date of submission of an application to export a drug, the FDA must review the application to determine if it meets all applicable requirements.	FD&C Act, Section 801(e) and 802, 21 *CFR* 210, Drug Export Amendments Act of 1986 (PL. 99–660), FDA Export Reform & Enhancement Act of 1996.	By the end of FY 1999, CDER will achieve electronic submission capability for certificates to foreign governments.	In FY 1998, develop and pilot Export Certificate Program.
For records submitted to the Agency, persons may use electronic records in lieu of paper records or electronic signatures in lieu of traditional signatures, in whole or in part, provided that certain requirements are met.	FD&C Act, Sections 201–903; PHS Act Section 3512, 21 *CFR* 11.	By the end of FY 2002, CDER will achieve capability and capacity for electronic submission and archiving of information required to submit NDAs without paper copy.	By FY 1997, establish the structure of the Electronic Document Room (EDR).
		By the end of FY 2002, CDER will achieve capability and capacity for electronic submission and archiving of ANDAs.	By FY 1997, establish the structure of EDR.

Statutory authority	Relevant statute and/or regulation	Relevant FY 1999 performance goals	FY 1997 performance baseline
Any record of the FDA that is disclosed in an authorized manner to any member of the public is available for disclosure to all members of the public, except that data and information subject to the exemptions established in 21 CFR 20.61 for trade secrets and confidential commercial or financial information, and in Section 20.63 for person privacy, shall be disclosed only to the persons for the protection of whom these exemptions exist.	FD&C Act, Sections 201–903, 5 United States Code 552, 21 *CFR 20.*	By the end of FY 2002, CDER will make publicly releasable information available via Internet.	By FY 1998, the Electronic Document Room, as required by the Electronic Freedom of Information Act, will be initiated.
Publish regulations for adequate and well-controlled clinical trials by 4/9/98 and substantial evidence by 10/9/98.	Animal Drug Availability Act (ADAA), (P.L. 104–250) Section 2(e).	FDA Center for Veterinary Medicine (CVM) will revise Investigational New Animal Drug Application procedural regulations and implement provisions of the ADAA and CVM's REGO initiatives.	ADAA enacted by 10/9/96
Recognize and approve list of standards suitable for use in application review.	FD&C Act, Sections 514 (b) and (c).	FDA Center for Devices and Radiologic Health (CDRH) will recognize over 415 standards for use in application review and update the list of recognized standards.	0 recognized

FY 2000 Performance Goals are not identified in this Plan. Specification of these goals is dependent upon final determination of the President's FY 2000 Budget submission to Congress.

Objective B—Maximize the Availability and Clarity of Information for Consumers and Patients Concerning New Products

1. Identification of Needs

FDA is reviewing applications for new drugs, biologics, medical devices and food additives more quickly. Dissemination of information that will enhance consumption decisions about these new products must keep pace with the products' earlier availability. The Agency would like to provide timely information to consumers and patients, however, in some instances products are reaching the market faster than FDA can inform its stakeholders. The Agency's ability to disseminate information must be enhanced by upgrading its technology, its computers, and the training of its employees to keep abreast with the latest developments in technology. FDA is under pressure from Congress, the medical community, patients, and industry to provide timely unbiased information to its stakeholder.

- Dissemination of information to consumers and patients concerning new products must keep pace with the earlier availability of products.
- The Agency is aware of the growing diversity of consumer health needs and interests. To respond to this diversity, FDA is attempting to target product information that it is tailored, as much as possible, to appropriate patient and professional audiences.
- The growth in health benefits made possible by scientific advances and new product technology is a tremendous benefit to U.S. consumers. The speed of technology development, combined with increasing product complexity, requires creative approaches in keeping everyone rapidly and accurately informed.
- FDA recognizes that consumers and patients want and deserve active input and participation in the Agency's policy and product decisions. The Agency is receiving rapid input from consumers.
- FDA considers collaborations with others in the public and private sector critical to achieving synergies in information technology. FDA has accepted the challenge of dissemination of accurate and timely information, although at times it can be daunting, particularly because of the widespread audiences the Agency serves.
- Use of the Internet has become increasingly central in FDA communication with its stakeholders. FDA must upgrade its capabilities in this area.

2. Stakeholder Views

Stakeholders strongly agree that maximizing the availability and clarity of information to consumers and patients about new FDA-regulated products is a priority. A selection of stakeholder comments is provided below:

- ''We have consistently argued that efforts to reform the Agency must build on, not dismantle, the ability of the FDA to safeguard drug products . . . As the FDA's authority has been relaxed, we feel that safety has been relaxed as well.'' [consumer advocacy group]
- ''We see the FDA . . . as a data warehouse, as an information source.'' [professional association]
- ''. . . FDA should aggressively educate patients' advocacy groups, disease-specific organizations, disease experts, and new biotech companies about FDA's function, process, and scope.'' [consumer advocacy group]
- Ensure the validity and integrity of drug information provided on the Internet. [State, local, or federal government]
- Re-evaluate [FDA's] policy on direct-to-consumer advertising. [professional association and consumer advocacy group]
- ''Do not depend upon scientists to review the direct-to-consumer advertising.'' [State, local, or federal government]
- ''Although Congress imposed this requirement, or at least asked FDA to come up with ways to maximize information about new products, our feeling on this was that this is really not

a function for FDA to promote new products. Rather, FDA's obligation would be to refer inquiries about new products, new drugs, etc. to the appropriate parties, and that might be professional societies, physicians, medical device companies, and drug companies. [trade association]

- Use plain language on product labels. [consumer]
- Make risk and safety data and statistics available to the public via the toll-free Consumer Information Line. [consumer advocacy group]
- Inform the public when companies have been asked to revise or pull ads, and explain why. [consumer advocacy group]

3. Current Innovations/Reinventions

FDA is currently expanding its information for consumers and patients. The following are illustrations of the information exchange:

Collaboration

The Agency is collaborating with industry to inform patients and consumers of the availability of new drugs (prescription and over-the-counter [OTC] drugs). FDA engages in cooperative research with industry for new food items as well as collaborates with industry to bring better food labels and information to its stakeholders.

The Agency is collaborating with industry to provide technical, non-financial assistance to manufacturers to enable them to bring their products that meet FDA standards to the market more quickly.

Outreach

FDA has an outreach program to keep physicians informed of new drugs available to their patients. The Agency is working cooperatively with the drug industry, consumers, and patients to inform them of new drugs and emerging new drugs. Patients are able to receive information on new therapies approved by foreign countries before they are approved by the Agency. Additionally, the Agency's Public Affairs Specialists in the field offices furnish information to interested consumers and patients concerning new drugs, devices, etc.

FDA delivers educational and technical assistance in the area of food safety messages and uses. The FDA Consumer/Fact Sheets and National Food Safety Hotlines are part of the Agency's outreach. The Internet is used to bring new information to consumers and patients. Each Center has its own web page. Many of these pages are interactive and allow the user to communicate with the Agency directly. Printed materials are provided to those that are without Internet capabilities, and many of the materials are in several languages. These materials help to inform consumers and patients about new drugs. The Veterinary Newsletter, exhibits, and Public Affairs Specialists programs keep the veterinary community abreast of the newest drugs and technology being developed.

During the 20th century, the nation has witnessed a more dramatic extension of longevity than humankind has ever seen. The Agency is making a concerted effort to ensure that older persons, their families, and their communities are aware of FDA's responsibilities and how the Agency can be a resource for them in improving the quality of their lives.

FDA's consumer protection and public health mission plays a particularly important role in building a sound health foundation for ensuring quality of a long life for older persons. The needs of the U.S. aging population are stimulating innovative research and technological advancements for both preventing and treating disease. The Agency makes a meaningful contribution to this research by facilitating the timely availability of safe and effective products, keeping unsafe or ineffective products off the market, and providing easily understandable and meaningful information about the availability of new products, as well as how to use products safely and effectively. In October 1998, the United Nations launched the International Year of the Older Person 1999 to bring global attention to the phenomenon of an aging world and the need to begin to establish the policies, programs, and services needed to meet the needs of an aging world. The Agency is an active participant in this initiative.

4. Plan for Meeting Statutory Requirements and Public Expectations

Section 406(b) requires the Agency to maximize the availability and clarity of information for consumers and patients concerning new products. FDA is engaged in a variety of activities to fulfill this requirement that revolve around four themes. First are Agency efforts to ensure that product information is tailored to meet the special needs of diverse populations. One example is the implementation of public awareness campaigns for consumers, i.e., *Take Time to Care, Office of Women's Health; Mammography Awareness Seminars; Food Safety Programs (Fight BAC!™); Over the Counter Labeling Changes (OTC) Campaign;* and the *Partnership for Food Safety Education.* As the population becomes more culturally diverse, FDA must reach out to consumers in ways they will understand. For instance, Public Affairs Specialists give seminars on new drug therapies, health fraud, labeling, etc. in different languages to fulfill the needs of diverse populations.

The Agency is entering into an increasing number of stakeholder ''collaborations'' to achieve a multiplier effect (e.g., with print media, radio, television, industry, other federal agencies, consumers, health professionals, and associations). Another example is implementation of the Pharmacist Education Outreach Program to assist pharmacists in explaining the drug approval process to consumers.

Another approach is focusing FDA resources so that patients are an integral part of the health care decisionmaking process. FDA has established programs to make promising investigational drugs, therapies, and devices available to patients with serious and life-threatening conditions. For example, FDA has also included patient representatives on advisory committees considering products for HIV/AIDS, cancer, and other serious diseases.

The technological revolution provides the Agency the tools to offer quick access to a wide range of information to consumers through various methods. The Internet is being used as a means for two-way communication—both to disseminate information about new products and to quickly answer questions about new and existing products. Additionally, the Agency will participate with NIH in the establishment of (under Section 402 of the Public Health Service Act) a registry of publicly and privately funded clinical trials for experimental drugs and biologics being tested for serious or life-threatening medical conditions. This registry will simplify the process of obtaining information.

5. Performance Goals for FY 1999

The table provided in this section links the performance goals and the measures with statutory requirements to regulate information provided to consumers and to ensure that consumers understand OTC drug information. The FY 1999 performance goals focus on both OTC and prescription drugs. FDA wants consumers and patients to receive and to be able to refer to the highest quality information when taking either OTC or prescription medications.

Highlighted below are key performance goals for FY 1999. These goals seek to provide drug information, in easily understood language, to consumers and patients faster through various outreach efforts. For more complete identification of performance goals and statutory requirements see the table at the end of this section.

FY 1999 Performance Goals

Evaluate drug information provided to 75 percent of individuals receiving new prescriptions.

Improve OTC information and consumers' ability to understand it by 2001.

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Statutory Authority	Relevant Statute and/or Regulation	Relevant FY 1999 Performance Goals	FY 1997 Performance Baseline	FY 1998 Performance Baseline
FDA regulates prescription drug advertising and labeling by monitoring all prescription drug promotions, enforcing the laws and regulations, developing new guidance, and conducting research to support the program.	FD&C Act Sections 502(n) and 505 and 21 *CFR* 200-202	FDA will a) evaluate the availability, quality, and usefulness of prescription drug information provided to 75 percent of individuals receiving new prescriptions; and b) complete two studies that will aid in development of comprehensive drug information.	In 1996, 65 percent of patients received written information about prescription drugs. Assessments are underway to determine the degree to which this information meets the criteria for "useful" information.	Initiate partnerships with three major organizations
				Target 25 percent of review documents processed using Electronic Data Management System (EDMS)
FDA is responsible for assuring that OTC drugs are safe and effective for use—this includes improving the legibility and clarity of all OTC drug labels as well as consumer's ability to comprehend important warnings and usage directions.	FD&C Act Section 502 and 21 *CFR* 201, 21 *CFR* 211.132	By the end of FY 2001, CDER will improve the legibility and clarity of OTC drug labels, improve the consumer's ability to read and understand important warnings and usage directions; and complete two studies that will aid in development of comprehensive drug information.	*Federal Register* publication on February 27, 1997 (62 FR 9024) published a proposal providing for standardized format for labeling. Study topics have been identified and studies are being designated.	

FY 2000 Performance Goals are not identified in this Plan. Specification of these goals is dependent upon final determination of the President's FY 2000 Budget submission to Congress.

Objective C—Implementing Inspection and Postmarket Monitoring Provisions of this Act

A central part of FDA's responsibilities to protect the public health includes: (1) ensuring that manufacturing establishments and the products being produced by these establishments—both domestic and imported—are meeting safety and quality standards that are acceptable to the U.S. and (2) monitoring these products to identify and correct any problems associated with their consumption and use. Through inspection and monitoring activities, potential hazards are identified and corrected in time to prevent or minimize public exposure.

The discussion that follows is divided into these two areas of postmarket responsibility.

Subobjective C1.—Assuring Product Safety

A. Domestic Inspections

1. Identification of Needs

FDA is responsible for ensuring the safety of products produced and distributed by more than 100,000 domestic establishments. The Agency uses its inspection authority, as directed by the statute, to provide this assurance. Approximately 45,000 of these establishments manufacture or process regulated product. FDA inspected 30 percent of these facilities in FY 1997. A sizable number of the remaining establishments (23,000) are distribution facilities, of which FDA inspected 10 percent in FY 1997. The remainder includes 10,000 mammography facilities, which FDA inspects at a nearly annual rate, and a varied assortment of other establishment types, e.g. control laboratories, importer/brokers, clinical investigators, and conveyances, of which FDA inspected about 14 percent in FY 1997. Overall, approximately 40 percent of FDA's current inspectional coverage is provided through contracts with states.

As these varying inspectional coverage statistics indicate, FDA exercises considerable discretion regarding the frequency and comprehensiveness of inspections. For approximately 25 percent of this inventory, however, the law requires FDA to conduct inspections at specified maximum time intervals. Certain manufacturing facilities must be inspected at least once every 2 years, and mammography facilities must be inspected at least once each year. In recent years, inspection coverage has fallen short of meeting these statutory requirements. The table below summarizes the Agency's recent coverage of the domestic inventory including the segment subject to statutory minimum inspection coverage as well as the segment over which the Agency has discretion regarding inspection frequency. To meet the statutory requirements, 100 percent of the mammography facilities and at least 50 percent of the other statutory establishments should have been inspected in FY 1997. As the data show, with the exception of mammography facilities, neither goal was reached.

Program area	Inventory	Statutory coverage		Non-statutory coverage	
		Establishments*	Coverage in FY 1997 (percent)	Establishments*	Coverage in FY 1997 (percent)
Biologics	5,685	2,787	46	2,898	13
Human Drugs	19,749	6,408	23	13,341	12
Devices (excluding mammography)	27,638	4,870	28	22,768	9
Mammography	10,000	10,000	96	.....	.....
Foods	49,000	NA	NA	49,000	23
Animal Drugs and Feeds	6,414	1,688	27	4,726	13

*Status as of May 1998.

2. Stakeholder Views

Agency stakeholders expressed strong support for more regulatory enforcement in general, and the continued focus on risk-based inspections in particular.

- ''Stratify the inspections based upon past history of compliance of companies, the degree of risk of the product, and various other elements.'' [trade association].
- FDA should increase its efforts to monitor the marketplace to remove unapproved products and also those that provide unfair competition. [trade association]
- Inspections should take a comprehensive approach and ''focus on the health impact of the regulations, not just the 'black-and-white' of the regulations. [state, local or Federal government]
- There should be more enforcement efforts to prevent distribution of illegally marketed and compounded drugs, unapproved drugs not manufactured in accordance with current GMPs, illegal extralabel use practices, illegal distribution of veterinary prescription drugs, marketing of unapproved feed ingredients, and extraordinary claims on animal feed labels. [trade and professional associations]
- Stakeholders endorsed HACCP systems for seafood and retail settings and the possible expansion of HACCP into other food-related areas, but only when supported by science and a high consumer safety priority. [trade association]
- ''Move towards a voluntary HACCP-based system for dairy products and away from checklist inspections and prescriptive plant processing regulations.'' [trade association]
- HACCP would be applicable in general for ''foods with a demonstrated high risk (e.g., unpasteurized juice).'' In contrast, stakeholders urged the Agency not to ''promote the HACCP process for device conformance,'' but to consider ISO certifications [standard setting organization].
- Stakeholders encouraged FDA to work closely with the states and to ''be a leader (i.e., leadership in science, setting standards, evaluating state programs, certifying inspectors).'' [state, local or federal government].
- The Agency should provide more guidance and training to state investigators to minimize inconsistency between investigations in different states and districts, thereby contributing to a level playing field for regulated firms. The Agency should involve states in the development of enforcement strategies related to animal drugs and feeds. [state, local or federal government]

Stakeholders tended to support the idea of third-party inspections, especially noncritical inspections.

- The Agency should identify more functions that could be performed by third parties. [trade association]
- In some cases, particularly the manufacture of animal feeds, voluntary self-inspection with third-party oversight might be appropriate. [state, local or federal government]
- At the same time, however, the Agency needs to be careful to avoid duplication of effort and to ensure consistency between FDA inspectors and third parties. [trade association]

3. Current Innovations/Reinventions

The Agency's domestic inspection program is an integral part of the strategy for monitoring the compliance status of the regulated industry. The goals of an inspection may be many and varied, i.e., to verify data submitted to the FDA in a new drug or biologic application, and to ensure continued compliance with application commitments. Inspections monitor the regulatory control over manufacturing operations including compliance with current GMP regulations. The results of inspections form the basis for many of the Agency's administrative and regulatory decisions, including new drug, device, or biologic approvals, as well as detecting industry problems or objectionable conditions and practices.

Establish Risk-Based Priorities

Given the large inventory of establishments it must inspect with limited resources, FDA targets the highest risk products and those facilities whose violations of standards would most likely expose the public to unnecessary risk. The cornerstone of the Agency's drug (human and animal), medicated feed, biological, and medical device inspection strategy is the biennial inspection requirement, which mandates the inspection of critical establishments in the Agency's inventory, primarily manufacturers, at least once every 2 years. While FDA has no such legal mandate for food inspections, it is moving toward establishing a vertically integrated food safety system that is risk-based and which would allow it to inspect high-risk establishments every 1 to 2 years and moderate-to-low risk establishments every 4 years.

Adopt a System Rather Than a Piecemeal Approach to Agency Regulation

Manufacturing processes are becoming more complex due to the rapid advancement of science and technology. This trend continues to accelerate. This increasing complexity is mirrored in FDA's approach to ensuring comprehensive, consistent, and fair inspections.Where, in the past, the Agency often perceived its role as providing quality control for the industries it regulated, today, it recognizes the essential role that establishments themselves must play to ensure product quality assurance.The Agency is focusing more on ensuring that the systems the industry has in place to monitor the quality of its products are adequate. This approach stresses the importance of HACCP-type inspections and frequently requires that the Agency take a multidisciplined, team approach to inspections.

- the FDA Center for Biologics Evaluation and Research (CBER), which used to conduct many inspections on its own, joined with the FDA Office of Regulatory Affairs (ORA) to form 'Team Biologics' whereby teams of CBER product specialists and specially trained investigators from ORA's field force work together to conduct surveillance inspections. Follow-up compliance actions are handled under a streamlined system that provides concurrent review by CBER and ORA.
- CDER, to ensure inspection consistency, is developing standards for investigator training and certification for performance of pharmaceutical inspections.
- CFSAN has developed and implemented HACCP controls for seafood and has proposed HACCP controls for the juice industry. All seafood processors had been inspected by the end of FY 1998 to verify proper use of HACCP, and 6,681 industry officials and federal and state inspectors have been trained in seafood HACCP through the Seafood Alliance.
- CDRH, whose quality systems regulations ask manufacturers to take more responsibility for assuring the quality of devices, is moving toward systems-oriented inspections and developing HACCP-type programs for firms with a good compliance history.

Work More Closely With External Stakeholders

The Agency increasingly has emphasized communication and education as alternatives that are at times preferable to and more effective in achieving and maintaining compliance than the more traditional enforcement approaches used in isolation. It accomplishes this by providing training and workshops for industry groups, seeking the views of stakeholders, and sharing information with stakeholders and colleagues. Some examples of the Agency working closely with external stakeholders include:

- CBER produced a satellite broadcast on blood establishment inspections to educate the industry and held a workshop for manufacturers of licensed *in vitro* diagnostics.
- CDRH undertook education efforts on quality systems requirements.
- CFSAN issued guidance on GMPs and Good Agricultural Practices (GAPs), worked with the U.S. Department of Agriculture (USDA) to achieve adoption of the Food code by an increasing number of states, collaborated with JIFSAN/World Health Organization (WHO) for risk assessment, and cooperated with USDA and the Centers for Disease Control and Prevention (CDC) to implement a national education program on retail food preparation practices.
- CDER, ORA, and a major industry scientific trade organization in conjunction with a university developed a new approach for training field investigators in pharmaceutical manufacturing operations and the application of GMP and other FDA regulations to new drug development.
- CVM, in cooperation with stakeholder groups, sponsored satellite teleconferences concerning compliance with the BSE feed regulation and the Animal Medicinal Drug Use Clarification Act, which concerns extralabel drug use.
- District offices conduct ''grass roots'' meetings and industry exchange meetings on a variety of regulatory matters as a means of facilitating an ongoing dialogue with various constituencies.

4. Plan for Meeting Statutory Requirements and Public Expectations

Under provisions of the Food, Drug and Cosmetic Act and the Public Health Service Act, FDA is required to conduct biennial inspections of approximately 16,000 registered drug, biologic and device production facilities. Although there is no statutory requirement that mandates a particular frequency for the inspection of any food establishment, or those drug, biologic and device facilities excluded from the biennial requirement, the statute obliges the Agency to ensure the safety of regulated products within these establishments. Accordingly, goals have been set within these establishment categories to achieve an average inspection cycle of once every 4 years, with appropriate risk-based variations in this cycle where warranted.

FDA fell short of meeting its statutory biennial and annual inspection obligations by approximately 4,000

inspections in FY 1997. In an effort to improve its performance in these critical areas, FDA plans to rely increasingly on states and other third parties, both for direct help with some statutory inspections and for other important inspectional obligations, thus freeing some of FDA's own resources to cover additional statutory obligations. Because all public and private sector organizations in the future will be subject to the same resource-constrained environment, FDA may have to consider that even a highly collaborative inspectional network may not be adequate to completely meet existing statutory inspectional requirements. A strategic reassessment may be in order to determine the kinds of statutory flexibility that would be desirable to preserve the comprehensive consumer protection intent of the FD&C Act, and at the same time, allow FDA to address the most critical health and safety priorities. Some examples of Agency initiatives either planned or already underway include the following:

- Developing contracts with states and public health agencies to inspect unlicensed blood banks.
- Reinstating state contracts for medical gas inspections, oxygen bars, and emergency medical services. FDA is considering a pilot First Party Audit Program (FPAP).
- Concentrating its own resources on the highest risk devices such as cardiac implantables and relying on third parties for inspection of lower risk products.
- Continuing to develop contracts and collaborations with states for both statutory and non-statutory animal drug and feed inspections.
- Conducting joint surveillance work with CDC and USDA and working with the Association of American Feed Control Officials (AAFCO) to develop a model program for medicated feed manufacturers that includes self inspection.

Special Emphasis on Food Safety: The Agency recognizes its obligation to ensure the safety of the food supply, and the public expects food to be safe. To met this expectation, FDA needs to inspect high-risk establishments every 1 to 2 year and moderate-to-low risk establishments every 4 years. This level of inspection coverage will require an additional 4,000 to 6,000 annual inspections. FDA's own food safety assurance efforts is being integrated with a national risk-based food safety system. This will require close collaboration with USDA, CDC, the states, food manufacturers and food retailers. Key elements of the initiative are:

- Surveillance activities that enhance electronic communication with states and other agencies to permit rapid identification of and response to foodborne hazard outbreaks;
- A cooperative inspection and monitoring effort with states that focuses on high-risk firms, and emphasizes enforcement of initiatives such as FDA's BSE Feed regulation.
- Education emphasizing safe handling practices for consumers and retailers through FDA's Model Food Code; and
- Research to develop improved methods of detecting and identifying pathogens and formulating preventive interventions.

5. Performance Goals for FY 1999

This section contains two tables. The first table summarizes the Agency's domestic inspection performance goals for FY 1999. The second table links these performance goals to the statutory requirements.

FY 1999 Performance Goals

Inspect 46 percent of registered biologic firms
Inspect 23 percent of registered drug manufacturers, propagators, compounders, or processors
Inspect 28 percent of registered class II and III medical device manufacturers, propagators, compounders, or processors
Conduct 8,898 inspections of mammography facilities
Ensure that 50 percent of seafood industry operating under HACCP
Develop HACCP final rule for fruit and vegetable juices
Inspect 50 percent of registered animal drug and feed establishments

Statutory authority	Relevant statute and/or regulation	Relevant FY 1999 performance goals	FY 1997 performance baseline
Biennial GMP inspections of biologic firms (50 percent annually).	FD&C Act—Sec. 510(h)	Coverage: 46 percent	Coverage: 46 percent.
Biennial inspections of registered drug manufacturers, propagators, compounders, or processors (50 percent annually).	FD&C Act—Sec. 510(h)	Coverage: 23 percent	Coverage: 23 percent.
Biennial inspections of registered class II and III medical device manufacturers, propagators, compounders, or processors (50 percent annually).	FD&C Act—Sec. 510(h)	Coverage: 28 percent	Coverage: 28 percent.
Annual inspections of mammography facilities	PHS Act—Sec. 354	Conduct 8,898 inspections	Conduct 8,280 inspections.
General authority to inspect food, drugs, devices, or cosmetic establishments.	FD&C Act—Sec. 704	Ensure that 50 percent of seafood industry operating under HACCP. Develop the HACCP final rule for fruit and vegetable juices.	
Biennial inspections of registered animal drug and feed establishments (50 percent annually).	FD&C Act—Sec. 510(h)	Coverage: 20 percent	Coverage: 27 percent.

FY 2000 Performance Goals are not identified in this Plan. Specification of these goals is dependent upon final determination of the President's FY 2000 Budget submission to Congress.

Subobjective C1—Assuring Product Safety (Continued)

B. Imports

1. Identification of Needs

Imported products pose multiple challenges to FDA. These include the sheer volume and diversity of products, the difficulty of ascertaining exactly which establishments are shipping products to the United States, and the difficulty of verifying conformity with GMPs quality systems. Each of these challenges, is described in the following paragraphs.

The Volume and Diversity of Products

FDA is responsible for ensuring the safety of nearly 4 million line entries that cross our borders annually, or over 12,000 entries per day. Imports of all products that FDA regulates have been increasing; pharmaceuticals, both finished and bulk, are increasing very

rapidly. Approximately $57 billion of FDA-regulated product was imported in 1997. The sources are diversifying and including more products from countries that are typically categorized as emerging economies, with emerging regulatory infrastructures. The products include, among others, food products that have been implicated in serious disease outbreaks in the United States, food products that could pose health threats if not processed and handled properly, over-the-counter drugs that do not require a new drug application with the Agency, as well as approved drugs, biologics, and medical devices.

Difficulty in Ascertaining Establishments Shipping to the United States

Section 417 of FDAMA [510(i) of the Act] now requires all foreign manufacturing establishments whose drug and device products are imported into the United States to register. There is, however, no universal registration requirement for producers of imported food products. Manufacturers/packers of low-acid canned food, acidified foods, and infant formula (all of which products are considered at high risk) register or list with the FDA; other food producers and processors are not required to register or list with FDA, making identification of sources of product difficult.

Difficulty of Verifying Conformity with GMPs/Quality Systems

There are two ways that typically are used to confirm that product has been produced properly—end point product testing (which for imports could be analysis of border samples) and on-site inspections. There are difficulties with both of these approaches. To date, no effective, scientifically based method has been established for general screening of foreign drug product for adherence to GMPs. Analysis of product samples is reasonably effective in assuring conformity, but the volume of trade and resource limitations preclude high rates of analysis. On-site inspections, the way of affirming conformity with good manufacturing practices/quality systems, are expensive and pose a host of logistical and practical difficulties. All foreign firms are aware that an FDA inspection is planned well in advance of the inspection, unlike the inspection of domestic establishments. Regardless of these challenges, there is consistent expectation from the Congress that FDA assure foreign product safety, and there is recurring congressional focus on FDA inspections of foreign manufacturing facilities.

2. Stakeholder Views

Stakeholders want assurances that foreign products meet the high standards expected of domestic products, and encourage FDA to conduct foreign inspections and periodic testing of product to confirm quality. Stakeholders strongly support FDA's activities in Codex and international harmonization, reflecting a desire to minimize regulatory burden while assuring that foreign produced food products are safe and therapeutic products are safe and effective. Stakeholders especially stress the importance of effective participation in Codex, because of the special place Codex holds in resolving international trade issues: the international standards that are adopted must reflect the standards and the high level of safety required in the United States. Support for pharmaceutical GMP mutual recognition agreements (MRAs) was predicated on the likelihood of there being equivalent standards as well as truly effective regulatory programs in MRA countries. The need for expanded funding support for Codex activities and for monitoring of imports was noted. A few typical comments are as follows:

Assurance that Foreign Product Meets High Standards Expected of Domestic Product

- ''Realizing this would require improved resources and budgets, it would still seem appropriate to perform periodic [foreign] quality assurance inspections and [border] laboratory analyses for identity, potency, and purity to ensure the quality of the drugs manufactured in foreign countries, do, in fact, equal ours.'' [state, local, or federal government]
- ''We do think more emphasis needs to be placed on inspections of imports for safety and purity, with the important caveat that such inspections should not constitute non-tariff trade barriers.'' [trade association]
- ''We have concerns regarding imported foods. In many cases, the hygienic requirements for production and processing of a food in the United States are more stringent than in countries with competing foods that are exported into the United States. More effort needs to be focused by CFSCAN in reducing the risk to the consuming public from the imported foods.''. [trade association]

Support for Codex Activities

- ''* * * the Codex has grown in significance as more and more of our nation's food supply is either imported or exported. Food regulatory bodies around the world, including the FDA, have begun to recognize that harmonized international standards are not just a good idea. They are essential if the country is going to compete in today's global marketplace.'' [trade association]
- ''Codex quality and safety standards are being utilized increasingly to resolve food safety disputes between nations in the World Trade Organization. Therefore, FDA must play an active role in Codex to ensure international standards and guidelines are consisent with US requirements.'' [trade association]

Support for Mutual Recongition Agreements (MRAs)

- ''CVM needs to determine whether foreign countries' requirements and systems for animal drug approvals ae equivalent to those in the United States.'' [trade association]
- ''While the MRA is attempting an honorable and desirable result, we would like to stress that the foreign countries should not only have equivalent standards but effective regulatory programs as well.'' [state, local, or federal government]

* * * but a Cautionary Note

- ''FDA needs to be a spokesperson for public health. The whole drive behind international harmonization is trade concerns * * * That may be fine from an economic standpoint, but it has nothing to do with FDA's public health mission. FDA needs to be there * * * to put public health * * * if not first, at least equal to trade concerns.'' [consumer advocacy group]
- ''* * * there is no question that we are bound by international agreements to harmonize regulatory standards in the area of food regulation * * * [T]his presents not only a threat but an opportunity because if we are going to go about harmonizing regulatory requirements, we can go up or down * * * When our current requirements may not be that high, we should raise our requirements and advocate the stronger requirements to become the international standard and a model for the U.S.''. [consumer advocacy group]

3. Current Innovations/Reinventions

FDA must ensure that the structure in place at the point of origin results in product being shipped to the United States meeting FDA requirements for safety, quality and/or therapeutic efficacy. This is a prevention-based strategy. A secondary strategy is detection based: conduct inspections of establishments shipping product to the United States, and screen product at the border for more intensive review.

Electronic screening allows conforming product to more quickly into commerce, while identifying product that may need more review at the border.

To deal with an explosively expanding workload and flat resources, FDA has directed its non-Prescription Drug User Fee Act of 1992 (non-PDUFA) foreign inspection activities toward higher risk products and is expanding PDUFA inspections to include more comprehensive inspections of facilities. More screening of product at the border is being accomplished through electronic means. And finally, analysis of product at the border is increasingly targeted toward product that is expected to pose high risk, as identified in the electronic screening. This risk-based prioritization means that many medium-risk product manufacturing facilities are not inspected, and most lower risk product facilities are not inspected.

4. Plan for Meeting Statutory Requirements and Public Expectations

With additional resources, FDA expects to strengthen the safety net that extends from the point of production in source countries through their entry into the U.S. These strategies encompass: (1) Reducing the probability that violative products will be exported to the United States; (2) Making rapid and reliable decisions on product entry at the border; and (3) Targeting violative products at the border and preventing their entry.

To reduce the probability that violative products will be exported to the United States, FDA will continue to participate in international negotiations and establishment of mutual recognition agreements with other nations. These activities will assure that products from those nations are meeting FDA standards, and will also increase the number of foreign inspections. As international regulatory agreements are negotiated among trading nations, the Agency will explore new and innovative institutional arrangements, such as a third-party certification of both imports and exports. These arrangements will have to be cost-effective, with statutory mandates, and enforce health and safety standards. To allow rapid entry of safe products, FDA continues to enhance its electronic screening process. To target violative products at the border, the Agency will maintain its ability to conduct laboratory analysis on a small percentage of products with potential problems, by increasing its sample analysis. The Agency will also enhance the electronic import entry system to provide for a broad-scope collection and analysis of information on product-country intersects that will allow development of national profiles. These profiles will provide the basis for establishing systematic risk-based priorities in examining import entries. Many of these efforts are obviously resource intensive, and linked closely with the steadily rising volume of imports.

5. Performance Goals for FY 1999

Consistent with the strategic directions noted above, FDA has established performance goals that support moving toward higher assurance of imported product safety in a time of increasing imports, as noted in the table below. The FD&C Act provides for sampling of product at import, and FDAMA modifications require the Agency to engage in activity designated to harmonize regulatory requirements with the objective of reducing the burden of regulations. Goals to support these activities address the short-term screening of imports at the border as well as longer term infrastructure development internationally, and these are noted in the table below. A more comprehensive table, illustrating legislative provisions, follows.

Associated with the immediate need at the border, the performance goals relate broadly to assuring the integrity of the screening system, such as by confirmation of the accuracy of entries and continual updating of the screening criteria and by improving the overall sampling and the targeted sampling rates at the border. Goals relating to international infrastructure development reflect ongoing commitment and heavy investment in international standard setting forums and negotiating equivalence agreements and mutual recognition agreements. Success in these realms would allow FDA to rely more on the regulatory structures in place at the point of origin of products being shipped to the United States. And finally, there are times when direct FDA inspections of foreign manufacturing sites are necessary to ensure the quality of product being shipped to the United States, and several performance goals reflect this need.

FY 1999 Performance Goals

Enhance the safety of imported products through increased surveillance of imported food products at the border, increased foreign inspections (from a target level of 40 to 75–100), through providing education, outreach, and technical assistance to foreign countries on the use of GAP/GMP guidance for produce, and through the evaluation of food production systems in foreign countries.

Enhance import screening capabilities for public health while ensuring that 55 percent of entries are released within 15 minutes.

Assess potentially violative imports through direct examination of 3 percent of entries.

Accept at least 20 percent of imports into the U.S. market through evidence that source country quality systems/standards/ audits meet the requirements of the FD&C Act.

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Statutory Authority	Relevant Statute and/or Regulation	Relevant FY 1999 Performance Goals	FY 1997 Performance Baseline
		Enhance the safety of imported products through increased surveillance of imported food products at the border, increased foreign inspections (from a target level of 40 to 75-100), through providing education, outreach, and technical assistance to foreign countries on the use of GAP/GMP guidance for produce, and through the evaluation of food production systems in foreign countries.	FY 1998: Participate in all meetings of Codex Alimentarius Committees that elaborate food safety standards including limits for contaminants in foods, codes of practice (e.g., GMPs) and guidelines (e.g., HACCP and decisions on equivalence); all World Trade Organization and NAFTA SPS matters involving food safety, discussion of all trade disputes involving legal interpretations of provisions of trade agreements that have implications in upholding U.S. food safety requirements.

Statutory Authority	Relevant Statute and/or Regulation	Relevant FY 1999 Performance Goals	FY 1997 Performance Baseline
The Secretary of the Treasury shall deliver to the Secretary of Health and Human Services, upon his request, samples of foods, drugs, devices and cosmetics which are being imported or offered for import into the United States, giving notice thereof to the owner or consignee, who may appear before the Secretary of Health and Human Services and have the right to introduce testimony...If it appears from the examination of such samples or otherwise that (1) such article has been manufactured, processed, or packed under unsanitary conditions, or in the case of a device, the methods used in, or the facilities or controls used for, the manufacture, packing, storage or installation of the device do not conform to the requirements of section 520(f) [GMPs] or (2) such article is forbidden or restricted in sale in the country in which it was produced or from which it was exported, or (3) such article is adulterated, misbranded, or in violation of section 505 [NDA provision], then such article shall be refused admission, except as provided in subsection (b) of this section [relabeling, reconditioning]...	FD&C Act 801 (a)	Enhance import screening capabilities for public health while ensuring that 55 percent of entries are released within 15 minutes	FY 1997: 50 percent
		Assess potentially violative imports through direct examination of 3 percent of entries.	FY 1996: approximately 3.3 percent FY 1997: approximately 2 percent

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Statutory Authority	Relevant Statute and/or Regulation	Relevant FY 1999 Performance Goals	FY 1997 Performance Baseline
The Secretary shall support the Office of the United States Trade Representative, in consultation with the Secretary of Commerce, in meetings with representatives of other countries to discuss methods and approaches to reduce the burden of regulation and harmonize regulatory requirements if the Secretary determines that such harmonization continues consumer protections consistent with the purposes of this Act. The Secretary shall support the Office of the United States Trade Representative, in consultation with the Secretary of Commerce, in efforts to move toward the acceptance of MRAs relating to the regulation of drugs, biological products, devices, foods, food additives, and color additives, and the regulation of GMPs, between the European Union and the United States. The Secretary shall regularly participate in meetings with representatives of other foreign governments to discuss and reach agreement on methods and approaches to harmonize regulatory requirements. The Secretary shall, not later than 180 days after the date of enactment of the Food and Drug Administration Modernization Act of 1997, make public a plan that establishes a framework for achieving mutual recognition of good manufacturing practices inspections	FD&C Act 803		
		Accept at least 20 percent of imports into the U.S. market through evidence that source country quality systems/standards/audits conform to the requirements of the FD&C Act.	The international trade data used to evaluate the status of this goal are affected by the nature and timing of evolving international agreements and standards. These data will be used to determine the volume of imports that conform with FDA requirements under these agreements and standards.

FY 2000 Performance Goals are not identified in this Plan. Specification of these goals is dependent upon final determination of the President's FY 2000 Budget submission to Congress.

Subobjective C2—Adverse Event Reporting

1. Identification of Needs

FDA needs to work with its community of stakeholders and develop a systematic approach to address the problem of over 2 million injuries and deaths a year occurring as a result of consuming/using FDA-regulated products. The ideal approach should be comprehensive, involving the participation of regulatory agencies, health care givers, the regulated industry, and the consumers/patients themselves. Components of this system include:

- *A full understanding of the causes of product-related deaths and injuries:* FDA needs to ensure that causes attributable to product labeling, design, or composition are addressed in the premarket review programs, where required. FDA currently receives yearly thousands of reports of injuries and deaths associated with the misuse or failure of FDA-regulated products. FDA should improve the quality of information on adverse events and product failure and develop methods to enhance understanding of causes of product-related injuries. Currently, for example, the FDA's ability to identify and track the causes of food-borne illness is very limited.
- *New postmarket information-gathering programs:* FDA often has little date with which to make fundamental decisions about some products. This is especially true for products like foods and cosmetics for which no premarket approval is required. New programs must be initiated, in collaboration with other agencies, to provide such data. The Agency also needs to implement new ways of gathering data. The National Sentinel Reporting System, a nationally representative sample of medical device user-facilities, is expected to be a less expensive way of providing better and quicker data on medical device-related problems than the 100 percent mandatory reporting system now used. This system cannot be implemented without the necessary funds.
- *Rapid dissemination of findings:* FDA needs to be an active participant in a multi-institutional network that can detect adverse effects quickly and can disseminate information to health professionals industry, and consumers quickly.
- *Outreach and education:* A significant component of improving the current situation is to improve the feedback to health care personnel and consumers. Requested resources will be devoted to developing strategies , such as consumer publications and public service announcements, to reduce the number of injuries from food and cosmetic products.

2. Stakeholder Views

There is strong stakeholder support for improving the data collection, analysis, and dissemination of information from the existing Adverse Event Reporting System and for some of the news data collection initiatives. A few indications of these views follow:

- ''The process for adverse event/injury reporting is perhaps the most urgent task facing FDA today. The process by which adverse injury report data is captured and converted to agency and consumer use must be addressed.'' [consumer advocacy group]
- ''Perform analysis and trend reporting on error and accident reports and make this available to the industry.'' [trade association]
- ''Improve the handling of adverse event reports for dietary supplements to involve the industry earlier.'' [trade association]
- ''Consumer safety is being threatened by funding cuts in 1996 that eliminated the adverse-reaction report part of the voluntary reporting program for cosmetics. [trade association]
- ''Accurate food safety statistics are vital to developing an effective strategy for enhancing the safety of our nation's food supply.'' [trade association]

3. Current Innovations/Reinventions

FDA has initiated several programs for gathering information on adverse events/injuries associated with the misuse or failure of FDA-regulated medical products and foods. These include the following:

MedWatch

MedWatch covers drugs, biologics, medical and radiation-emitting devices, and special nutritional products, such as medical foods, dietary supplements, and infant formulas. The MedWatch form is used for voluntary and mandatory reporting of adverse events and product problems by health professionals; the reports are sent on to the appropriate FDA component for analysis and follow-up action. Over 140 health professional and industry organizatios have joined the MedWatch effort as MedWatch Partners and actively support the program by promoting the importance of reporting serious adverse events or product problems to their members.

Adverse Events Reporting System (AERS)

With its new computer system, the *Adverse Events Reporting System (AERS)* is expected to form the basis for a revitalized pharmacovigilance program for the United States. AERS continues to be developed and will be relied upon by both CDER and CBER over ensuring years to provide accurate, accountable data for the performance goals identified for injury reporting.

FDA is responsible for monitoring the market for adverse effects of medical devices. FDA expects to receive over 63,000 postmarket reports in FY 1998, including mandated reports from medical device manufactures; voluntary reports from medical device professionals received through the problem reporting program (MedWatch); and results of field inspections. FDA currently is managing the huge numbers of reports in three phases. During the first phase, the reports are screened for completeness and entered into the data management system. During the second phase, the reports are analyzed for similar events, judged for severity, and searched for trends. The final phase focuses on action, such as issuing safety alerts and notifications to users (i.e., health professionals and patients) warning them of concerns and advising them how to prevent future occurrences.

Some manufacturers have been granted approvals to submit summary reports quarterly for adverse events involving specific devices. This summary erporting system is bieng expanded and will produce usable information at a small cost to both FDA and the industry.

FoodNet

FoodNet is the product of a cooperative venture among USDA, CDC, and FDA; it attempts to estimate the incidence of foodborne illness that is not revealed in obvious outbreaks. Most foodborne illness occurs in ways that appear sporadic and unrelated to each other. FoodNet, which has the ability to provide more comprehensive information through sources such as case-control studies and surveys of laboratories and physicians, can help FDA and its federal colleagues link illnesses that have a common cause, no matter where they occur.

National Antimicrobial Resistance Monitoring System (NARMS)

The National Antimicrobial Resistance Monitoring System (NARMS) was established in January 1996 as a collaborative effort among the FDA, USDA, and CDC. The system was

initiated in response to public health issues associated with the approval of fluoroquinolone products for use in poultry. The NARMS program monitors changes in susceptibilities to 17 antimicrobial drugs of zoonotic enteric pathogens from human and animal clinical specimens, from healthy farm animals, and from carcasses of food-producing animals at slaughter. The objectives of the system include: to provide descriptive data on the extent and temporal trends of antimicrobial susceptibility in *Salmonella* and other enteric organisms, to facilitate the identification of resistance in humans and animals as it arises, and to provide timely information to veterinarians and physicians. The ultimate goal of these activities is to prolong the lifespan of approved drugs by promoting prudent and judicious use of antimicrobials and taking appropriate public health action.

Vaccine Adverse Events Reporting System (VAERS)

CBER and CDC jointly overseas the *Vaccine Adverse Events Reporting System (VAERS),* which receives mandatory reports as required by the National Vaccine Injury Act about adverse effects from vaccines. CBER and its colleagues are discussing electronic submission of reports, which would provide more rapid access of the VAERs data to manufacturers.

4. Plan for Meeting Statutory Requirements and Public Expectations

Prompt identification of new, previously unrecognized problems with FDA-regulated products has the potential to decrease morbidity and mortality associated with those products and maximize the safety of approved products. Thousands of deaths and injuries could possibly be avoided, or their consequences reduced, through a comprehensive strategy aimed at finding out why incidents occur and implementing strategies to prevent them from occurring again.

One of the Agency's primary objectives is the development and implementation of a system for improving the quality of information on adverse events and product defects associated with FDA-regulated products. This system needs to address issues of injury reporting by focusing on three areas: surveillance and epidemiology; research; and education and outreach. FDA believes that such a system would maximize the safety of FDA-regulated products through increased reporting of potentially dangerous adverse events or product problems to FDA or the manufacturer. Increased reporting provides greater assurance that a potential problem with a marketed product will be discovered and appropriate corrective action will be taken, and it ensures systematic feedback to the health care community and the public. None of these systemic improvements are possible without adequate funding.

Surveillance and Epidemiology

- With sufficient resources, FDA continues to develop and revitalize its system for reporting, monitoring, and evaluating adverse events associated with FDA-regulated products. AERS is the basis for this revitalized program.
- FDA is also developing active reporting systems for foods and for medical devices. These active systems use statistical selection of sites to provide better estimates of adverse events from the events that are reported.
- FDA will implement a National Sentinel Reporting System to provide an alternative to 100 percent mandatory reporting by medical device user-facilities. The system will use a nationally representative sample of user-facilities to track postmarket adverse events and is intended to save the industry millions of dollars in reporting costs. The system also will provide FDA clinicians and analysts with more timely, and better quality, postmarket data, thus improving FDA's ability to detect and to analyze medical device-related problems. In addition, this system is intended to provide FDA with ready access to a network of clinical facilities that could offer clinical insight into problem investigation and participate in specific research and educational efforts on product problems. However, this cannot be implemented without the necessary funds.

Research

Methodologic and surveillance research efforts designed to understand the causes of, and the factors contributing to, product-related injuries are critical to reducing the number of FDA-regulated product injuries. Research will be initiated in ''human factors sciences'' to identify labeling and product interface design features that may cause or contribute to use error, a leading cause of avoidable deaths and injuries.

Education and Outreach

Improving feedback to health care professionals and consumers is critical to the improvement of adverse event reporting. Rapid dissemination of findings on injuries to the relevant stakeholders and the education of the medical community require additional resources. The Agency has begun to collaborate with other agencies and professional groups to produce teleconferences that convey general information or product-specific information, nationwide.

An integrated science-based system for reporting, monitoring, and evaluating food and cosmetics-based adverse events is necessary to make fundamental regulatory decisions and policies. This system will depend on a research program aimed at understanding how health care professionals, as well as the public, can better recognize product-problems, and on a related research program on methods of analyzing the data. The clinical evaluation of adverse events and the determination of risk assessment requires medical officers and other trained personnel to take follow-up actions, make clinically-based decisions, and report activities to FDA's existing staff.

5. Performance Goals for FY 1999

The table provided in this section links FDA's statutory requirements with performance goals in the FY 1999 Performance Plan, illustrating the Agency's efforts to consolidate several systematic approaches into one performance system.

Highlighted below are key performance goals for FY 1999 in the area of adverse event reporting. These performance goals deal with creating new, active surveillance systems, or with improving passive reporting programs to make them more useful and available. For more complete identification of performance goals and statutory requirements see the table at the end of this section.

FY 1999 Performance Goals

Implement AERS for the electronic receipt and review of Adverse Drug Report (ADR) reports

Evaluate pilot efforts for new postmarket surveillance system

Increase the number of reports on device events that are received and processed in summary form by using electronic reporting

Develop baseline surveillance data on foodborne illness under the FootNet program

Improve public access to information on adverse events with Special Nutritionals

Increase the number of human and animal isolates in National Antimicrobial Resistance Monitoring System (NARMS)

Statutory authority	Relevant statute and/or regulation	Relevant FY 1999 performance goals	FY 1997 performance baseline	FY 1998 performance baseline
Applicants must report to FDA adverse drug experience information.	FD&C Act, Section 505; Public Health Service Act, Section 2101–2134; 21 *CFR* 314.50, 314.80–81, 314.98, 314.540, and 600.80.	By the end of FY 1999, implement the AERS for the electronic receipt and review of voluntary and mandatory ADR reports.	Implementing the core system is currently under way and will be completed by FY 1998.	FY 1998: Pilot, five firms electronic entry uncoded only. Periodic reports only.
Plan and implement a sentinel user reporting system.	FD&C Act Section 519(b)(5).	Evaluate pilot efforts for new sentinel device reporting system as alternative to universal user facility reporting.	Not applicable	Recruit 24 pilot facilities.
CDRH				
Device user-facilities are required to report adverse events.	FD&C Act Section 519(b)(1).	Increase the number of low-risk postmarket reports received and processed in summary form. The total number of summary reports will be increased from 20,000 in FY 98 to over 25,000 in FY 99. This will be done by using innovative surveillance methods and improving quality and analysis needed for Safety Alerts and other actions..	Not applicable	FY 1998: 20,000 reports received in summary form.
CDRH				
CFSAN	.....	Work with CDC and other federal agencies to develop baseline surveillance data on foodborne illnesses required to evaluate the effectiveness of, set better priorities for, and determine appropriate outcomes for the Food Safety Initiative.	Sentinel Sites expanded to provide better coverage of the representative areas of the United States.	Expand the demographic diversity and size of the population covered by FoodNet by increasing the number active surveillance sites from 7 to 8. Begin implementation of PulseNet, which provides data required to do more rapid and accurate tracebacks to determine the causes of foodborne outbreaks.
CFSAN	.....	By the end of FY 1999, improve public access to timely information on adverse events related to dietary supplements, infant formulas, and medical foods by increasing the frequency of public releases of information in the Special Nutritionals Adverse Events Monitoring System from two per year to four per year.	Two releases in FY 1997.	The requisite hardware and software systems need to be purchased for integration of current Center-based limited capability systems.
CVM	.....	Assure that food derived from animals and animal products is safe for human consumption by increasing the number of human and animal isolates in the NARMS database.	*Salmonella* isolates: 1,287 human, 2,391 veterinary.	*Salmonella* isolates: 2,000 human, 3,000 veterinary.

FY 2000 Performance Goals are not identified in this Plan. Specification of these goals is dependent upon final determination of the President's FY 2000 Budget Submission to Congress.

Objected D—Ensuring access to the scientific and technical expertise needed by the Secretary—

1. Identification of Needs

FDA's ability to access the scientific and technical expertise necessary to carry out its mission must be enhanced, i.e., improving the science infrastructure, by upgrading the status of its facilities and equipment; augmenting and targeting its science expertise toward important new health enhancing technologies; and linking its science information to external sources.

Upgrade Facilities and Equipment

FDA's current science capability, both internally generated and externally coordinated, supports a wide range of risk management activities, covering the life cycle of Agency-regulated products. The integrity of the science base should be sustained by state-of-art equipment and facilities, but at a minimum they must be in good repair. The present status of this infrastructure, in many cases, is considerably less than adequate. For instance, replacing the FDA's Los Angeles laboratory and expanding the Arkansas regional facility will provide the physical tools necessary to meet FDA's obligations.

Augment and Target Science Expertise

Although FDA's science efforts are supporting current efforts in premarket review, postmarket safety assurance, and product use monitoring, these programs are falling short of meeting the Agency's statutory mandates and public expectations. As the programs are enhanced to meet expectations, the Agency's access top state-of-the-art science must be expanded. This will be accomplished both through strategic recruitment of needed expertise *and* through creative collaboration with outside institutions. Because FDA must regulate increasingly complex products, the Agency's science capabilities must be able to keep pace with new scientific developments. Further, the science expertise must be positioned so that appropriate risk assessments can be targeted toward emerging technologies that are significant in protecting public health and which must reach the market place quickly.

Link Science Information to External Sources

FDA must make strides in linking its science information bases to external sources so that synergies can be realized and appropriate information can be brought to bear on risk assessment and risk management decisions promptly. If FDA does not enhance its ability to link its science information with other outside sources, it will lose comparability and communicability with these sources. Further, it will not be as able to capitalize on cost-effective use of science information to support regulatory decisions.

2. Stakeholder Views

Stakeholders strongly support the need for FDA maintaining a strong and well-linked science base to support increasingly complex regulatory judgments. A few illustrations of these views are indicated below:

- ''These needs to be a continuing strong commitment within the Food and Drug Administration towards maintaining an appropriate scientific base. It has been the experience of our member companies, with numerous examples relating to both clinical development and complex manufacturing issues, that these are speedily resolved because of the scientific expertise within [FDA]. [trade association]
- ''Our company's long history in biotechnology has repeatedly shown the value of active research scientists at [FDA]. [FDA's] personnel that are involved in research related to safety, efficacy, basic biology, mechanism of action, and other associated areas provide an important component for in-depth understanding of issues and bring an understanding and response to issues in a scientifically and regulatory responsible and appropriate manner.'' [industry representative]
- ''[FDA] Staff need to understand modern science . . . there is just not going to be any way that proper regulation can occur without people being able to communicate at the same level about this science. There needs to be maintenance and renewal of the state-of-the-art scientific leadership.'' [professional association]
- ''I express the public's strong interest in the Agency's ability to retain highly qualified scientists within the FDA. I ask, and adverse reporting statistics demand, that products be reviewed on the merit of scientic evidence, safety and effectiveness.'' [consumer advocacy group]
- Implement programs whereby Agency scientists participate in staff exchange programs with academia, other government agencies and industry. [health organization]

3. Current Innovations/Reinventions

FDA is expanding its access to scientific expertise through creative collaboration with the broader scientific community. This is being accomplished through several approaches:

Industry-Government-Academic Collaboration

Industry-government-academic collaboration enhances the Agency's scientific expertise, thereby using added resources that would otherwise be unavailable to the government. Examples of these collaborations are below.

- The FDA Science Board, a high-level committee of representatives from industry and academia advise the Commissioner and Chief Scientist on FDA scientific issues and activities.
- FDA has two significant collaborations with industry, the Collaboration for Drug Development Improvement (CDDI) and the Product Quality Research Initiative (PQRI), intended to leverage resources and to work with industry to improve the drug development process.
- FDA currently has approximately 25 collaborative research and development programs (CRADAs), which are designed to foster scientific collaboration between the federal government and sectors outside the government; a list of these programs can be found on the FDA Internet site. FDA is actively soliciting new collaborative agreements with industry in addition to advertising opportunities on the Internet.
- FDA has joint programs with the University of Maryland and the Illinois Institute of Technology to enhance safety of the food supply. This is particularly important in light of the government's Food Safety Initiative, which is designed to assure the American public that they can consuming the safest food possible.
- FDA annually sponsors a Science Forum and workshops to bring together scientists of like disciplines from across and outside the Agency to address cross-cutting topics. Examples of recent workshops include the deoxyribonucleic acid (DNA) microarray workshop, alternative toxicology testing methods, and mechanisms of carcinogenesis.

Intergency Collaboration

Encourage interagency cooperation allows the substantial expertise of other government scientists to focus their efforts on similar problems. For example, working with other agencies allows the FDA to prevent illness and epidemics. The Agency collaborates with the NIH to speed drug and vaccine development so these products can reach consumers more quickly. This interagency cooperation also allows the Agency to determine modes of infection and thereby educating scientists, which could lead to new testing methods.

Exchanging Scientific Expertise

Industry and FDA collaboration provides an atmosphere to encourage the exchange of scientific expertise. The FDA sponsors workshops on cutting-edge topics such as gene therapy and Simian Virus and DNA vaccines. The FDA/National Institute of Dental and Craniofacial Research (NIDCR) model MOU allows for use of scientific expertise on panels and as consultants to the CDRH's device group. Added to these face-to-face contacts, Agency scientists are encouraged to publish in professional journals so their non-government peers can learn from their work.

Information Technology

Information technology is a tool that allows FDA scientists to learn about new discoveries and to increase their abilities to review applications. For the Agency to produce excellent scientific work, FDA scientists must be aware of the latest developments and theories quickly and in a timely fashion so they can incorporate them into their work. Facing these scientists is the daunting task of accessing a voluminous amount of new information, which is generated too quickly for one person to follow. To assure this knowledge is incorporated into Agency decisions, FDA scientists use information technology to access databses of latest discoveries located in-house and in external scientific databases.

Information technology (IT) tools go beyond finding articles with new theories and approaches. The Agency uses IT tools to validate computer models to speed reviews. For instance, FDA scientists can review a comprehensive database on carcinogenicity of over 700 drugs. IT tools also are used to validate computer models in a timely manner so application decisions can meet statutory requirements.

4. Plan for Meeting Statutory Requirements and Public Expectations

Section 903 of the FD&C Act, as amended by FDAMA, requires FDA to carry out research relating to foods, drugs, cosmetics, and devices in realizing the intent of the Act. Section 903 also requires FDA to consult with experts in science, medicine, and public health and other stakeholders in carrying out its mission. In addition, FDAMA law (Section 414) mandates policies that foster collaboration between federal agencies and other science-based agencies.

FDA's plan for meeting these statutory requirements will encompass a variety of actions intended to enhance its science capabilities. One approach is for the Agency to conduct research projects that identify the causes of and factors contributing to product-related injuries. For instance, Agency scientists are examining labeling and product features that can be altered to prevent product-related accidents. To conduct these research efforts, the Agency will maintain and strengthen its in-house scientific expertise by expanding innovative and successful programs (e.g. in-house Fellows programs).

The Agency will continue to enhance its scientific collaborations with the larger scientific community by initiatives with the University of Maryland, Georgetown University, and other institutions of higher learning. Similarly FDA will strengthen the Agency's science base linkage to external sources to provide comprehensive science underpinning for important national health initiatives, such as working closely with CDC and USDA in the establishment of NARMS.

In addition to these steps, the Agency is developing improved methods to detect food pathogens and to assess health risks more rapidly so that consumers can implement preventive measures.

5. Performance Goals for FY 1999

The table below links the performance goals and measures with the science-related statutory requirements. FDA's main statute, the FD&C Act, provides broad authority to the Secretary to authorize research efforts. Performance Goals illustrate two types of efforts. The first identifies development of methods or products that can be applied to a specific health risk problem. For instance, one goal calls for studies on antibiotic resistance of foodborne pathogens.

The second type of goal identifies a long-range systemtic solution to a range of problems. Illustrative of this type is a multi-year research plan to improve methods for detection, control, and prevention of microbial contamination. A measure for this type of goal is more difficult to establish. Because scientific progress often results from diverse efforts, measuring this goal is an incremental process of small steps. In this goal, establishing relationships with stakeholders is a major step.

Highlighted below are key performance goals for FY 1999 in the area of science. Several goals enable the Agency to put science behind methods for quickly detecting potentially high-risk products. Other goals focus on collaborating with key stakeholders to increase science's role in regulatory policy. For more complete identification of performance goals and statutory requirements see the table at the end of this section.

FY 1999 Performance Goals

Implement a multi-year research plan to develop and improve methods for the detection, control, and prevention of microbial contamination on fresh produce.

Develop model to assess human exposure to a variety of foodborne pathogens.

Work with industry and academia to develop new techniques for eliminating pathogens on fresh prodcue.

Support product review by developing faster, more accurate tests on mechanisms of toxic actions.

Demonstrate a model toxicity knowledge base to support and expedite product review.

Develop better models to predict risk for cancer, reproductive, developmental, neurological, genetic, and acute toxicological outcomes.

Statutory authority	Relevant statute and/or regulation	Relevant FY 1999 performance goals	FY 1998 performance baseline
The Secretary is empowered through the Commissioner of FDA to conduct ''research relating to foods, drugs, cosmetics and devices''.	FD&C Act, Section 903(d)(2)(C).	.....	Develop and begin implementing an inter-agency research plan that more effectively coordinates the food safety research activities in FDA and USDA.
The Secretary is empowered through the Commissioner of FDA to conduct ''research relating to foods, drugs, cosmetics and devices''.	FD&C Act, Section 903(d)(2)(C).	.....	

Statutory authority	Relevant statute and/or regulation	Relevant FY 1999 performance goals	FY 1998 performance baseline
The Secretary is empowered through the Commissioner of FDA to conduct ''research relating to foods, drugs, cosmetics and devices''.	FD&C Act, Section 903(d)(2)(C).	.....	
The Secretary is empowered through the Commissioner of FDA to conduct ''research relating to foods, drugs, cosmetics and devices''.	FD&C Act, Section 903(d)(2)(C).	.....	Formalize PQRI collaboration.
The Secretary is empowered through the Commissioner of FDA to conduct ''research relating to foods, drugs, cosmetics and devices''.	FD&C Act, Section 903(d)(2)(C).	.....	Identify specific issues and areas of research focus and develop research protocols.
The Secretary is empowered through the Commissioner of FDA to conduct ''research relating to foods, drugs, cosmetics and devices''.	FD&C Act, Section 903(d)(2)(C).	.....	Identify priority material for standard development.
The Secretary is empowered through the Commissioner of FDA to conduct ''research relating to foods, drugs, cosmetics and devices''.	FD&C Act, Section 903(d)(2)(C).	.....	
The Secretary is empowered through the Commissioner of FDA to conduct ''research relating to foods, drugs, cosmetics and devices''.	FD&C Act, Section 903(d)(2)(C).	.....	Use model animal and cell culture transgenic systems to evaluate risk to the human genome.
The Secretary is empowered through the Commissioner of FDA to conduct ''research relating to foods, drugs, cosmetics and devices''.	FD&C Act, Section 903(d)(2)(C).	.....	Conduct case-control molecular epidemiology studies to assess breast and prostate cancer in African-American women/men.
The Secretary is empowered through the Commissioner of FDA to conduct ''research relating to foods, drugs, cosmetics and devices''.	FD&C Act, Section 903(d)(2)(C).	.....	Computer-based predictive system is being used as model for rodent and human hormone-binding proteins.
The Secretary is empowered through the Commissioner of FDA to conduct ''research relating to foods, drugs, cosmetics and devices''.	FD&C Act, Section 903(d)(2)(C).	.....	Present at a scientific forum a unifying approach to safety assessment for both carcinogenic and non-carcinogenic effects.
The Secretary is empowered through the Commissioner of FDA to conduct ''research relating to foods, drugs, cosmetics and devices''.	FD&C Act, Section 903(d)(2)(C).	.....	Screen animal products and environments for a microorganism harboring antibiotic resistance.

FY 2000 Performance Goals are not identified in this Plan. Specification of these goals is dependent upon final determination of the President's FY 2000 Budget submission to Congress.

Objective E—Establishing Mechanisms, by July 1, 1999, for Meeting the Time Periods Specified in This Act for the Review of all Applications and Submissions Described in Subparagraph A (Objective A) and Submitted After the Date of Enactment of the FDAMA

In the spring of 1999 FDA plans to reevaluate where it stands in relation to this objective. The Agency plans to make information on this objective easily available to Congress, the public, regulated industry, and other stakeholders. FDA is exploring making this information available on the Internet.

Objective F—Eliminating Backlogs in the Review of Applications and Submissions Described in Subparagraph A (Objective A), by January 1, 2000

Objectives E and F are directly related. The strategies followed to achieve Objective E will also achieve Objective F. By making improvements and changes to the review process to meet the time frames for reviewing applications and submissions, any backlogs for them will be eliminated. Therefore, this section will address both objectives.

1. Identification of Needs

While, the Prescription Drug User Fee Act of 1992 (PDUFA) has been a great success, there is a gap in performance for applications not covered by PDUFA that needs to be filled for FDA to meet its statutory review requirements. In addition, public expectations, internal time frames, and PDUFA goals provide important benchmarks for FDA performance.

FDA needs to reduce total product development time, meet statutory review requirements, expedite and add value to new technologies, maintain high-quality interactive reviews, and target laboratory work to support and expedite science-based reviews. FDA has successfully adopted a number of innovations and re-engineering approaches to improve review performance. FDA has now reached the point, however, where additional improvements toward meeting statutory requirements cannot occur without additional resources.

FDA ultimately needs to speed safe and effective products to the American public by reducing the overall development and review time for new products without compromising product quality and safety.

2. Stakeholder Views

Making new products available to the public more quickly and streamlining the product development and review process while ensuring safety are important goals.

- Some consumer advocacy groups want the Agency to assign the highest

priority to expediting the development and review of drugs, while others expressed fear that meeting review deadlines could result in safety risks.

- ''Replace the resource-intensive [Generally Recognized as Safe] GRAS petition process with a streamlined notification system. Finalize the GRAS notification regulation.'' [trade association]

Using a risk-based strategy for reassigning resources is a major Agency strategy. A number of stakeholder comments seemed to support this strategy.

- A major health organization stated that many blood products have been in the public arena for a long time, and placing such products on the lowest review requirement tier would allow the transfer of resources to new products.
- A health professional society said that FDA should reassess the risk-benefit of analysis of lifestyle-modifying drugs and subject them to a different type of scrutiny than that which is used to treat or to prevent disease or other medical conditions. Also, they said it is hard to argue that it is worth taking a lot of work with a new drug product which in no way adds therapeutic benefit.

A number of stakeholders said that proper implementation of fast-track provisions will expedite entry into the marketplace for drugs for serious and life-threatening illnesses.

- A biotechnology industry council suggested that the PDUFA II goals be applied first to fast-track products. They also said that definitions need further clarification and a broad, flexible definition is needed for ''serious and life-threatening illnesses.'' The council also suggested that quarterly conferences be held to discuss surrogate end points and that fast-track designation should be done by directors of review divisions.

There was both support for the Agency's strategy for implementing third-party reviews and also concern about the strategy.

- A major trade association said that more medical devices should be added to the list for using third-party reviews.
- A regulatory organization said that FDA should continue to offer its reviews as an alternative to third-party reviews and that FDA should carefully review the third-party evaluations just as it would the work of its own staff.

A major concern of industry stakeholders was that FDA communicate what is expected of them in developing and testing new products and in providing evidence for approval.

- A major trade association said that FDA should make its procedures transparent, particularly in terms of Good Review Practices (GRPs). Various documents such as GRPs and reviewer handbooks should be provided to industry and other stakeholders to provide a better understanding of the workings of FDA and to allow industry to bring its procedures into conformity.

Improving the efficiency of the review process by implementing an electronic submission and review process was also an industry priority.

- A biotechnology industry representative suggested that information flow and documentation needs to be handled more efficiently and suggested that this could be done through the establishment of a standard electronic information exchange environment that would set the standards for industry.

Animal drug industry stakeholders placed a high priority on FDA implementing the recently enacted Animal Drug Availability Act (ADAA).

- Full implementation of the ADAA was an issue brought up by many of the stakeholder groups, including drug manufacturers, livestock producers, and feed producers. All of the speaker who mentioned it strongly urged FDA to devote whatever resources were necessary to fully implement ADAA.

3. Current Innovations/Reinventions

FDA has been pursuing a number of strategies for many years to improve on-time performance in reviewing applications and submissions, especially for new products. Many of these strategies were developed in conjunction with the Agency's stakeholders. Many strategies focus on speeding up the review process and encompass risk-based priorities, re-engineering FDA processes, information technology, communications with industry and other stakeholders, and scientific support for reviews.

Strategies also focus on the drug development stage (i.e. pre-Investigations New Drug [pre-IND] and IND), and on assisting industry during the testing and pre-application process. A day saved in developing a new therapy is just as valuable as a day saved in reviewing it. FDA is working with product sponsors to ensure that they know what is expected of them so that product testing and preparation of the application are more effectively and efficiently done. As PDUFA has shown, these pre-application efforts have resulted in higher quality applications, faster reviews, and an increasing approval rate. Non-PDUFA applications have benefited from PDUFA improvements and innovations. However, FDA performance on non-PDUFA applications still needs improvement.

FDAMA start-up and additional workload may reduce review performance in the near term, especially for medical devices and other non-PDUFA products. The growing complexity of medical devices requires that more time be spent interacting with sponsors and keeping guidelines up to date. Increased guidance and interactions with industry are resource-intensive activities. These factors will challenge FDA's ability to meet time frames.

Establish Risk-Based Priorities

FDA is focusing more on actual and potential risks in establishing priorities. FDA will identify and concentrate resources on high-risk, high-impact products or work areas, those where its direct intervention helps consumers and health care professionals the most. Despite current and anticipated budget constraints, resources will be redirected; and while some key areas will be increased, some low-risk product areas will be decreased. Several examples of these effects include:

- Exempting low-risk medical devices from the premarket notification requirement;
- Using a threshold of regulation approach for very low risk noncarcinogenic indirect food additives.
- Giving priority to high-risk, food safety-related, food additive petitions.

Conducting risk versus benefit communications research to assess the public's ability to understand risks versus benefits in drug information and to develop useful and meaningful ways of presenting important information about a drug's known risks and benefits.

FDA's research agenda includes development of more predictive animal and non-animal models for safety and efficacy evaluation. FDA scientists are developing new approaches for use in predicting risk associated with human toxicity; developing computer-based systems to aid in the assessment of human toxicity; and conducting research on specific agents, concepts, or methods that can be applied to questions of human health and safety.

In addition to the risk-based priorities, FDA has identified high-impact areas such as pregnancy labeling, antibiotic resistance, medication errors, consumer information and direct-to-the consumer advertising policies that require the expenditure of further resources. In conjunction with stakeholders, FDA already is devising innovative strategies and methods to address the public health impact of these emerging issues.

Re-Engineer FDA Processes

The Agency has been working to change its culture to fulfill its dual mission of promoting and protecting public health. As a result, FDA has been re-engineering many of its product review processes for the last several years. In fact, many e provisions of FDAMA codified results of re-engineering efforts initiated by the Agency. The following provides highlights of a variety of re-engineering efforts, resulting from FDAMA, other laws, stakeholder input, and the Agency's own initiative.

The introduction and expansion of the Project Management System (PMS) to expedite review processes for both CDER and CBER established team-based project management programs designed to improve the quality and efficiency of the drug review process. These programs have demonstrated their effectiveness and continue to be refined and enhanced. Team-Based Project Management is a powerful technique combining the use of multidisciplinary teams led by project managers and scientific leaders who use the tools and techniques of project and resource tracking. Review disciplines are organized into multidisciplinary teams early in the review process to develop a review plan and commit to target interim and milestone completion dates. Teams meet periodically to exchange information, discuss significant aspects of the applications, review progress toward meeting target completion dates, and make resource adjustments. Project management is being used throughout the Agency.

FDA is committed to the implementation of the third-party provision of FDAMA and is already pursuing that program. A key factor will be to apply lessons earned from the earlier third-party pilot program for medical devices. The fact that the earlier pilot worked well for the limited number of manufacturers who participated in the program, combined with the expanded list of eligible devices under FDAMA, should go a long way toward attracting additional submissions from industry.

FDA plans to issue guidance that describes its fast-track policies and procedures. To ensure compliance with the legislatively managed time frame of 60 days for designation, FDA is using management tools similar to those which have contributed to FDA's success in meting PDUFA goals. The guidance will include the Agency's definition of ''a serious or life-threatening condition.'' In accordance with the statutory mandate, FDA currently is working with NIH, sponsors, and its advisory committees in the timely evaluation of proposed surrogate end points. For many years FDA has been working with sponsors to develop surrogate end points that are reasonably likely to predict clinical benefit for serious and life-threatening conditions.

Streamlining efforts will be focused on reducing the overall time required for product development. More guidance and meetings will be provided during the development process to assist firms in conducting appropriate clinical trials and in developing the scientific evidence needed to gain approval of new products.

During FY 1998 CFSAN implemented a proposed notification procedure for independent GRAS determinations. The Agency's current plan is to codify this process during FY 1999. Once codified, this procedure will largely replace the resource-intensive GRAS affirmation petition process with a less resource-intensive notification process.

Other efforts to simplify regulatory approaches and to reduce the burden on stakeholders include:

- Implementation of a phased review process as in CVM where CVM works with the sponsor throughout the research and development process and reviews technical sections of a New Animal Drug Application (NADA) as they are completed;
- Implementation of additional premarket notification programs in lieu of requiring preapproval before marketing (For example, CFSAN has worked to prepare for implementation of a premarket notification program for food contact substances established by FDAMA.);
- Development of GRPs for Agency reviewers (CBER and CDER conducted a series of workshops to develop an action plan that will evolve into guidelines that describe and develop GRPs guidance. A reviewer's handbook is also being developed.);
- Development of a list of approved drugs for which additional pediatric information may produce health benefits;
- Elimination of certain labeling requirements;
- Amendment of regulations to provide additional flexibility for health claims on foods and to clarify nutrient content claims; and
- Allowing use of abbreviated study reports in an NDA.

Capitalize on Information Technology

FDA is aggressively moving towards an electronic regulatory submissions environment. The benefits of electronic submissions include:

- lower paper handling costs for FDA (e.g. document room contract, offsite storage, onsite storage);
- quicker access to information by reviewers (e.g. no waiting for a paper copy and no rekeying of data for analysis; and
- time and cost savings during product development (most firms have their data in electronic format and won't have to waste time creating/delivering a paper submission to FDA).

Work More Closely With External Stakeholders

A common theme in all of the improvements to the review process has been an intensive effort to improve communication with sponsors and manufacturers. This dialogue, which occurs by telephone, by videoconference, and in person, helps manufacturers understand what FDA is looking for in product submissions. Explanations include what information will be needed and why. Unresolved questions are resolved on the spot. Communication with industry continues to improve, with more companies taking advantage of opportunities to consult with FDA.

These efforts have already contributed to improved review performance. For example, CDRH has zero backlogs of 510(k)s, Pre-Marketing Approvals (PMAs), and PMA supplements. In addition, CDRH has begun implementing additional meetings as required by FDAMA, such as determination meetings, where a prospective PMA applicant may request a meeting to determine the type of scientific evidence necessary for PMA approval; agreement meetings, where prior to submitting an Investigational Device Exemption (IDE) application, a sponsor may request a meeting with FDA to discuss the specific investigational plan for a class III or implantable device; and 100-day PMA meetings, where within 100 days after the submission of a PMA, the sponsor may request a meeting to discuss the application.

FDA is working to make Agency processes transparent by providing a variety of information in a variety of ways including:

- Increased sponsors/applicants meetings;
- Presubmission conferences;
- Presentations to industry about a variety of topics on the most common GMP deficiencies that prevent approval;
- Providing potential applicants with assistance during the development process;

- Comprehensive guidance for preparation of submissions to FDA; and
- Initiating industry education programs/services regarding studies and safety data needed to support petitions and notifications.

FDA continues to rely on outside advisory committees for advice in reviewing product applications. Outside experts add a wide spectrum of judgement, outlook, and state-of-the-art experience to FDA's decisionmaking process. These expert advisors add to FDA's understanding, so that final Agency decisions reflect a balanced evaluation. FDA is working to improve the advisory committee process and make-up of committees to address stakeholder concerns.

FDA participates in international harmonization activities that can result in reduced regulatory burden for the regulated industry, much of which markets products throughout the world. By harmonizing requirements to the maximum extent possible, the industry hopes to reduce the costs involved in bringing products to market. Activities are underway in the Codex Alimentarius forum to develop and adopt a standard for food additives. Activities to date have also included work toward major parts of common technical documents that could be used for premarket filings in the three major industrialized markets. Efforts are underway with medical devices to identify areas of divergence in the various regulatory requirements, with an eye toward ultimate harmonization of requirements. With drugs and biologics, these activities should result in both higher quality products regardless of production site, and their getting on the market quicker due to reduced conflict in regulatory requirements in major markets. By relying both on manufacturer self certification of conformity with international harmonized standards as part of the accepted premarket application and on third-party reviewers for preliminary 501(k) determinations, FDA has reduced the demand on staff to review original documentation.

Strengthen the Scientific and Analytical Basis for Regulatory Decisions

Addressing the adequacy of the research and scientific infrastructure is one of FDA's highest priorities, especially as it supports the review of pre-market applications. Laboratory work is targeted to develop in-house scientific expertise, scientific guidance, and science-based standards. In-house scientific expertise is used to consult on product reviews, especially in areas of emerging technologies. Guidance can benefit both applicants and review staff in developing and reviewing applications. FDAMA requires FDA to recognize and use appropriate standards in the application review process for medical devices. Evidence that a product meets established standards will expedite the review process.

FDA still faces shortages of certain expertise, especially through attrition. Some positions are very difficult to recruit. FDA needs to use a number of pay incentives (higher initial pay, bonuses, comparability allowances, etc.) to attract and retain medical officers, especially for certain specialties. Other positions include pharmacokinetics specialists, statisticians, and computer specialists. As a result, FDA sometimes is lacking critical skills in the review area such as having an orthopedic surgeon to review surgical devices.

4. Plan for Meeting Statutory Requirements and Public Expectations

Because of the success of PDUFA, FDA will continue to use PDUFA submission and review mechanisms to improve the review performance of non-PDUFA applications and reduce product development time. Ultimately matching PDUFA's success without additional resources comparable to those provided by user fees is problematic.

PDUFA is different from some European review systems in that it provides the certainty of a result within a definite time. Examples of the submission and review mechanisms used to accomplish this are: (1) presubmission consultations; (2) refuse-to-file authority and increased application quality; (3) project management; and (4) complete first actions.

Several interlocking strategies will be used to meet FDA's review goals. To ensure wise use of reviewers' time, FDA will continue to re-engineer its product review processes in many areas and will continue to look for more effective means of shortening processes without sacrificing quality and safety concerns. Second, several initiatives are underway to reduce the direct review burden on the Agency by reducing the requirement for pre-approval in some areas and replacing it with an industry notification process. Third, consultation with product sponsors early in their research and development process will raise the likihood that high-quality commercial applications will follow and make their way through the FDA system in the shortest time possible. Finally, all of FDA's product review centers will continue to automate their application submission and review tracking systems. This should result in not only faster review times, but also increases in Agency productivity. Without an infusion of resources, however, it is unlikely that FDA will be able to meet its statutory obligations in all product areas.

Additional Steps

Make available and reassign more resources by using a risk-based priority system and seek additional resources as needed. FDA will redirect resources to high-risk and high-impact product areas and decrease resources in areas that pose a lower risk or benefit.

Expand collaboration with product sponsors to expedite product development.

Provide more productive interactions with industry through up-to-date guidance review, industry education, and reviewer training.

Increase efforts with other industrialized countries to harmonize product protocols.

Expand electronic submission and review systems.

Target laboratory support for emerging technologies.

Expand use of third-party reviews.

5. Performance Goals for FY 1999

The table provided in this section highlights some key PDUFA and non-PDUFA applications and summarizes the time frames, performance goals, baseline performance, and the number of applications overdue. A more comprehensive table and listing of applications and submissions covered by this Plan are in Appendix D.

The PDUFA time frames and performance goals are the result of in-depth negotiations between the drug industry and FDA. Industry and FDA determined that both the time frames and the percentage goals were realistic, achievable with the additional user fee resources, and desirable. The PDUFA time frames for drug applications differ in some cases from the FD&C Act statutory requirements. Biologics applications are covered by the Public Health Service Act, which does not have any statutory time frames. Also, the PDUFA goals do not stipulate that 100 percent of applications be completed on time. In many cases, however, a 100 percent performance level was achieved. Industry is pleased with the certainty of a timely action and response from the review process and the net result of a higher percentage of applications being approved faster. Patients have benefitted by having more therapies available more quickly. Performance goals for PDUFA

applications are based on the PDUFA time frames.

Performance goals for non-PDUFA applications are based primarily on the statutory time frames with two exceptions. Non-PDUFA biologics applications have no time frames. FDA has voluntarily adopted the original PDUFA time frames for these applications. Also performance goals for food and color additive petitions are based on 360 days, twice the statutory time frame of 180 days. This is being done to provide realistic targets as the petition review process is being re-engineered.

FDA has developed clear performance goals that will enhance and further expedite reviews for product applications. Setting these goals has provided a valuable management tool for identifying performance expectations and assessing achievements. Using the PDUFA model, performance is measured based on the percentage of applications acted on within the appropriate review time frame. The on-time performance measure is important because it represents definitive decisions both to approve and not to approve. An accurate portrayal of the timeliness of the Agency's decision making should focus on the length of time to all decisions, both positive and negative.

Overdue applications are those whose review period exceeded the time frames and were under active review at the end of the fiscal year.

Highlighted below are key performance goals for FY 1999 in the area of application review. These goals represent applications for new and priority products and for new medical uses of approved products. For more complete information see the table at the end of this section and Appendix D.

FY 1999 Performance Goals

Review 90 percent of priority NDAs/PLAs/BLAs within 6 months.
Review 90 percent of priority efficacy supplements within 6 months.
Review 70 percent of blood PLAs/BLAs within 12 months.
Review 50 percent of PMAs within 180 days.
Review 30 percent of food and color additive petitions within 360 days.

Time frame	Relevant statute	Percentage of first actions within review time period		Overdue*
		FY 1999 performance plan goal (percent)	FY 1997 baseline (estimate) (percent)	
PDUFA:				
Review Priority NDAs within 6 months (CDER) (PDUFA II commitment letter).	FD&C Act Sec. 505(b) requirement is 6 months.	90	100	0
Review Standard NDAs within 12 months (CDER) (PDUFA II commitment letter).	FD&C Act Sec. 505(b) requirement is 6 months.	90	99	0
Review Priority NDAs/PLAs/BLAs within 6 months (CBER) (PDUFA II commitment letter).	FD&C Act Sec. 505(b) requirement is 6 months. None for PLAs/BLAs.	90	100	0
Review Standard NDAs/PLAs/BLAs within 12 months (CBER) (PDUFA II commitment letter).	FD&C Act Sec. 505(b) requirement is 6 months. None for PLAs/BLAs.	90	100	0
Review priority efficacy supplements within 6 months (CDER & CBER) (PDUFA II commitment letter).	FD&C Act Sec. 505 requirement is 6 months for NDAs. None for PLAs/BLAs.	90	100	0 (CBER)
Non-PDUFA:				
Review ANDAs within 180 days (CDER)	FD&C Act Sec. 505(j)	60	54	
Review and act on blood and source plasma PLAs/BLAs and PLA/BLA major supplements within 12 months (internal time frame) (CBER).	No statutory requirement	70	83	4
Review PMAs within 180 days (CDRH)	FD&C Act Sec. 515(d)(1)(A) ...	50	65	0
Review 510(k)s within 90 days of receipt	FD&C Act Sec. 510(k) and (n)	90	98	0
Review food and color additive petitions within 360 days. (CFSAN) Goals are based on 360 days. FY 1997 baseline based on 180 days**.	FD&C Act Sec. 409 and Sec. 721 requirement is 6 months.	30	**24	
Review NADAs and ANADAs within 180 days (CVM)	FD&C Act Sec. 512(c)(1)	.....	75	

*The number of applications overdue at the end of FY 1998.

**(Within 180 days) For petitions received in FY 1996, using the previous petition review procedure, 24 percent of petitions received ''first action'' within 180 days. CFSAN re-engineered the petition review process in FY 1998 and redefined ''first action.'' FY 1997 figures and FY 1999 are not directly comparable.

FY 2000 Performance Goals are not identified in this Plan. Specification of these goals is dependent upon final determination of the President's FY 2000 Budget submission to Congress.

FDAMA Plan Appendices

Introduction

These appendices and corresponding Internet resources provide direct access to information being used within FDA to implement the FDA Modernization Act. The actual text of the law passed by Congress, verbatim comments from stakeholders related to improving the way FDA conducts business and the current implementation plan are available for review and comment.

Considerable space is devoted to stakeholder participation. Even so, only a fraction of the information is attached—the balance of information has been organized on FDA's website (*http://www.fda.gov*). By clicking on ''FDA Modernization Act'' anyone can navigate through the wealth of FDAMA-related materials currently available.

The text of the FDA Plan for Statutory Compliance is located on the Internet at <*http://www.fda.gov/oc/fdama/fdamapln/default.htm*>. Additional questions or comments or requests for printed copies of these Appendices may be directed to the Planning and Management Communications Staff by telephone at 301–827–5207, by e-mail to *schasin@oc.fda.gov*, and by FAX to 301–827–5225.

Appendix A: Statutory Authority

http://www.fda.gov/oc/fdama/fdamapln/appenda

(1) Section 903 of Federal Food, Drug, and Cosmetic Act

(2) Section 406 of FDA Modernization Act of 1997

Note: Section 406 of the FDA Modernization Act amends, and has been incorporated into, Section 903 of the Federal Food, Drug, and Cosmetic Act. Copies of both sections have been included here. They include FDA's current mission and annual reporting requirements.

Appendix B: Stakeholder Involvement in 1998

http://www.fda.gov/oc/fdama/fdamapln/appendb

(1) A message to FDA Stakeholders (includes 7 key questions)
(2) Supplemental questions asked of stakeholders
(3) Written summaries of each stakeholder meeting
(4) Stakeholder comments organized by FDAMA objectives

Note: Involving stakeholders in modernizing the way FDA meets its statutory and public health responsibilities is perhaps the most significant advancement addressed in FDAMA. In 1998 FDA made dramatic progress in gathering ideas for improving the Agency's effectiveness. Stakeholders include experts in science, medicine, and public health, as well as consumers, product manufacturers, importers, and retailers. Most of the information contained in this section is also available on FDA's website.

Appendix C: FDAMA Implementation Chart

http://www.fda.gov/oc/fdama/fdamapln/appendc

Note: This chart shows FDA's current status on implementing FDAMA. It provides a section-by-section overview including a brief description of each task, statutory deadlines, and key contacts within the Agency. This is the actual implementation framework used by the Agency.

Appendix D: Application and Submission Review

http://www.fda.gov/oc/fdama/fdamapln/appendd

Note: This report includes a summary of 32 of FDA's most important functions as they relate to applications from manufacturers. Examples of these requirements are, ''Review priority New Drug Applications within 6 months,'' and ''Review infant formula notifications within 90 days.'' Also included are statistics that show current performance levels, future targets, and overdue applications. Other applications and submissions are also identified.

Other Information Resources Available via Internet

FDA's web site at *http://www.fda.gov/oc/fdama/comm* includes a special section on the FDA Modernization Act of 1997. Various reports, meeting summaries, stakeholder comments, and implementation updates are available continuously for persons with Internet access. Visitors can learn more about FDA as well as view first-hand the Agency's progress in achieving its mission.

Full text of FDAMA, Public Law 105–115:
http://thomas.loc.gov/bass/d105/d105laws.htm1

Transcripts of public meetings:
http://www.fda.gov/ohrms/dockets/dockets/98N0339/calendar.htm

Federal Register Notice of 9/14/98 public meeting
http://www.fda.gov/ohrms/dockets/98fr/082098b.pdf

FY 1999 Performance Plan
http://www.fda.gov/ope/FY99pplan/pplan.htm

Department of Health and Human Services (DHHS) main web site:
http://www.dhhs.gov.

Dated: November 16, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–31387 Filed 11–20–98; 8:45 am]

BILLING CODE 4160–01–M

Federal Register

Tuesday
November 24, 1998

Part IV

Department of Education

Office of Special Education and Rehabilitative Services, Office of Special Education Programs; Inviting Applications for New Awards for Fiscal Year 1999; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.326R]

Office of Special Education and Rehabilitative Services, Office of Special Education Programs; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1999

AGENCY: Department of Education.

ACTION: Extension notice.

SUMMARY: On October 9, 1998, a notice inviting applications for a new Regional Resource Center (Region I) awards under the Technical Assistance to Improve Services and Results for Children with Disabilities program was published in the **Federal Register** (63 FR 54546). The notice stated that the deadline for the transmittal of applications was November 23, 1998. This notice extends the deadline for the transmittal of applications to December 15, 1998.

Note to Applicants: The notice contained other information regarding the transmittal of applications for the FY 1999 competition under the Technical Assistance to Improve Services and Results for Children with Disabilities program authorized by IDEA, as amended. This notice extends only the closing date for the transmittal of applications from November 23, 1998 to December 15, 1998. Potential applicants should consult the statement of the final priority published on October 9, 1998 (63 FR 54546) to ascertain the substantive requirements for their applications.

FOR FURTHER INFORMATION CONTACT: For further information on this notice contact Debra Sturdivant, U.S. Department of Education, 600 Independence Avenue, SW, room 3317, Switzer Building, Washington, D.C. 20202–2641. FAX: (202) 205–8717 (FAX is the preferred method for requesting information). Telephone: (202) 205–8038. Internet: Debra—Sturdivant@ed.gov Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953.

Individuals with disabilities may obtain a copy of this notice in an alternate format (e.g. Braille, large print, audiotape, or computer diskette) by calling (202) 205–8113.

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Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

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To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office at (202) 512–1530 or, toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins, and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Dated: November 17, 1998.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98–31349 Filed 11–23–98; 8:45 am]

BILLING CODE 4000–01–P

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Note: The list of Public Laws for the second session of the 105th Congress has been completed and will resume when bills are enacted into law during the first session of the 106th Congress, which convenes on January 6, 1999.

A cumulative list of Public Laws for the second session of the 105th Congress will be published in the **Federal Register** on November 30, 1998.

Last List November 19, 1998.